# code of federal regulations

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## Mineral Resources

COMPLETED

## 30

PARTS 200 TO 699
Revised as of July 1, 1986

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ORIGINAL

# code of federal regulations

## Mineral Resources

## 30

PARTS 200 TO 699

**Revised as of July 1, 1986**

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12

# Table of Contents

Page

Explanation ........ v

Title 30:

Chapter II—Minerals Management Service, Department of the Interior ........ 3

Chapter III—Board of Surface Mining and Reclamation Appeals, Department of the Interior ........ 185

Chapter IV—Geological Survey, Department of the Interior ........ 187

Chapter VI—Bureau of Mines, Department of the Interior ........ 203

Finding Aids:

Table of CFR Titles and Chapters ........ 233

Alphabetical List of Agencies Appearing in the CFR ........ 247

Redesignation Tables ........ 255

List of CFR Sections Affected ........ 259

*Cite this Code* CFR

*thus:* 30 CFR 201.100

# Explanation

The Code of Federal Regulations is a codification of the general and permanent rules published in the Federal Register by the Executive departments and agencies of the Federal Government. The Code is divided into 50 titles which represent broad areas subject to Federal regulation. Each title is divided into chapters which usually bear the name of the issuing agency. Each chapter is further subdivided into parts covering specific regulatory areas.

## ISSUE DATES

Each volume of the Code is revised at least once each calendar year and issued on a quarterly basis approximately as follows:

| | |
|---|---|
| Title 1 through Title 16 | as of January 1 |
| Title 17 through Title 27 | as of April 1 |
| Title 28 through Title 41 | as of July 1 |
| Title 42 through Title 50 | as of October 1 |

The appropriate revision date is printed on the cover of each volume.

## LEGAL STATUS

The contents of the Federal Register are required to be judicially noticed (44 U.S.C. 1507). The Code of Federal Regulations is prima facie evidence of the text of the original documents (44 U.S.C. 1510).

## HOW TO USE THE CODE OF FEDERAL REGULATIONS

The Code of Federal Regulations is kept up to date by the individual issues of the Federal Register. These two publications must be used together to determine the latest version of any given rule.

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Each volume of the Code contains amendments published in the Federal Register since the last revision of that volume of the Code. Source citations for the regulations are referred to by volume number and page number of the Federal Register and date of publication. Publication dates and effective dates are usually not the same and care must be exercised by the user in determining the actual effective date. In instances where the effective date is beyond the cut-off date for the Code a note has been inserted to reflect the future effective date. In those instances where a regulation published in the Federal Register states a date certain for expiration, an appropriate note will be inserted following the text.

## OMB CONTROL NUMBERS

The Paperwork Reduction Act of 1980 (Pub. L. 96-511) requires Federal agencies to display an OMB control number with their information collection request. Many agencies have begun publishing numerous OMB control numbers as amendments to existing regulations in the CFR. These OMB numbers are placed as close as possible to the applicable recordkeeping or reporting requirements.

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Provisions that become obsolete before the revision date stated on the cover of each volume are not carried. Code users may find the text of provisions in effect on a given date in the past by using the appropriate numerical list of sections affected. For the period before January 1, 1973, consult either the List of CFR Sections Affected, 1949-1963, or 1964-1972, published in three separate volumes. For the period beginning January 1, 1973, a "List of CFR Sections Affected" is published at the end of each CFR volume.

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A subject index to the Code of Federal Regulations is contained in a separate volume, revised annually as of January 1, entitled CFR INDEX AND FINDING AIDS. This volume contains the Parallel Table of Statutory Authorities and Agency Rules (Table I), and Acts Requiring Publication in the Federal Register (Table III). A list of CFR Titles, Chapters, and Parts and an alphabetical list of agencies publishing in the CFR are also included in this volume.

An index to the text of "Title 3—The President" is carried within that volume.

The Federal Register Index is issued monthly in cumulative form. This index is based on a consolidation of the "Contents" entries in the daily Federal Register.

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There are no restrictions on the republication of material appearing in the Code of Federal Regulations.

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For a summary, legal interpretation, or other explanation of any regulation in this volume, contact the issuing agency. Inquiries concerning editing procedures and reference assistance with respect to the Code of Federal Regulations may be addressed to the Director, Office of the Federal Register, National Archives and Records Administration, Washington, D.C. 20408 (telephone 202-523-3517). Sales are handled exclusively by the Superintendent of Documents, Government Printing Office, Washington, D.C. 20402 (telephone 202-783-3238).

JOHN E. BYRNE,
*Director,*
*Office of the Federal Register.*

*July 1, 1986.*

# THIS TITLE

Title 30—MINERAL RESOURCES is composed of three volumes. The parts in these volumes are arranged in the following order: Parts 0 to 199, Parts 200 to 699, and Part 700 to End. The contents of these volumes represent all current regulations codified under this title of the CFR as of July 1, 1986.

For this volume, LaJuana D. Caldwell was Chief Editor. The Code of Federal Regulations publication program is under the direction of Martha B. Girard, assisted by Robert E. Jordan.

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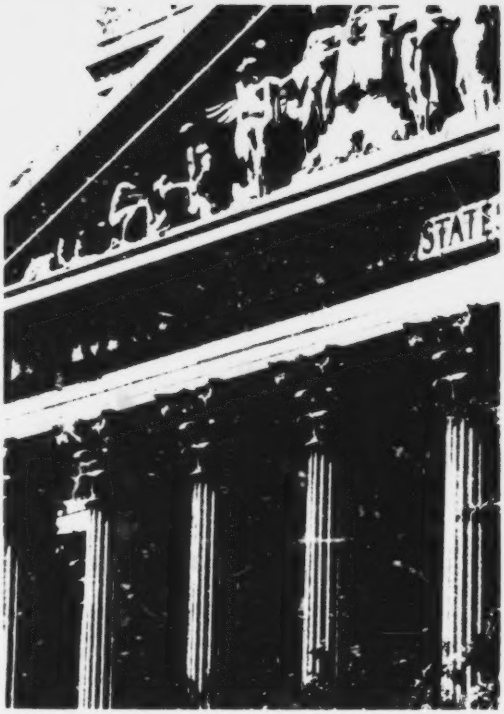

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# Title 30—Mineral Resources

(This book contains Parts 200 to 699)

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| | Part |
|---|---|
| CHAPTER II—Minerals Management Service, Department of the Interior | 201 |
| CHAPTER III—Board of Surface Mining and Reclamation Appeals, Department of the Interior | 301 |
| CHAPTER IV—Geological Survey, Department of the Interior | 400 |
| CHAPTER VI—Bureau of Mines, Department of the Interior | 601 |

CROSS REFERENCES:

Bureau of Land Management, Department of the Interior, regulations with respect to mineral lands: 43 CFR, Chapter II, Subchapter C.

Foreign Trade Statistics, Bureau of the Census, Department of Commerce: 15 CFR Part 30.

Forest Service regulations relating to mineral developments and mining in national forests: 36 CFR Part 228.

General Services Administration regulations for stockpiling of strategic and critical materials: 41 CFR Chapter 101, Subchapter C.

General Services Administration regulations with respect to reservation of minerals essential in the production of fissionable material: 41 CFR Part 101-47.

Interstate Commerce Commission: 49 CFR Chapter X.

Bureau of Indian Affairs, Department of the Interior, energy and minerals regulations: 25 CFR Chapter 1, Subchapter I.

EDITORIAL NOTE: Other regulations issued by the Department of the Interior appear in Title 25, Chapters I and II; Title 36, Chapter I; Title 41, Chapters 14 and 114; Title 43; and Title 50, Chapters I and IV.

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2

# CHAPTER II—MINERALS MANAGEMENT SERVICE, DEPARTMENT OF THE INTERIOR

---

## SUBCHAPTER A—ROYALTY MANAGEMENT

*Part* *Page*

201 General ... 5

202 Royalty rates and rentals ... 5

203 Relief or reduction in royalty rates ... 8

206 Product valuation ... 11

207 Approval of sales agreements or contracts covering the disposal of oil and gas lease products (not applicable to Indian or Naval Petroleum Reserve lands) ... 17

208 Disposal of Government royalty oil ... 18

209 Acquisition and disposition of Federal royalty interests taken in kind ... 21

210 Forms and reports ... 26

212 Records and files maintenance ... 29

215 Accounting and auditing standards [Reserved]

216 Production accounting ... 31

217 Audits and inspections ... 38

218 Collection of royalties, rentals, bonuses and other monies due the Federal Government ... 39

219 Distribution and disbursement of royalties, rentals, and bonuses ... 47

220 Accounting procedures for determining net profit share payment for outer Continental Shelf oil and gas leases ... 48

228 Cooperative activities with States and Indian tribes ... 62

229 Delegation to States ... 65

230 Royalty refunds [Reserved]

232 Interest payments [Reserved]

233 Escrow and investments [Reserved]

234 Bonding—payment liability [Reserved]

241 Penalties ... 72

*Part* *Page*
242 Notices and orders [Reserved]
243 Appeals—Royalty management program ........ 76

SUBCHAPTER B—OFFSHORE

250 Oil and gas and sulphur operations in the Outer Continental Shelf ........ 78
251 Geological and geophysical (G & G) explorations of the Outer Continental Shelf ........ 129
252 Outer Continental Shelf (OCS) oil and gas information program ........ 144
256 Outer Continental Shelf minerals and rights-of-way management, general ........ 150
259 Mineral leasing: Definitions ........ 176
260 Outer Continental Shelf oil and gas leasing ........ 176
265 Alaska OCS Orders [Reserved]
266 Atlantic OCS Orders [Reserved]
267 Gulf of Mexico OCS Orders [Reserved]
268 Pacific OCS Orders [Reserved]
270 Nondiscrimination in the Outer Continental Shelf 180

SUBCHAPTER C—APPEALS

290 Appeals procedures ........ 183

# SUBCHAPTER A—ROYALTY MANAGEMENT

## PART 201—GENERAL

Subpart A—General Provisions—[Reserved]

Subpart B—Oil and Gas, General—[Reserved]

Subpart C—Oil and Gas, Onshore

Sec.
201.100 Responsibilities of the Associate Director for Royalty Management.

Subpart D—Oil, Gas and Sulphur, Offshore—[Reserved]

Subpart E—Coal—[Reserved]

Subpart F—Other Solid Minerals—[Reserved]

Subpart G—Geothermal Resources—[Reserved]

Subpart H—Indian Lands—[Reserved]

AUTHORITY. The Act of February 25, 1920 (30 U.S.C. 181, et seq.), as amended; the Act of May 21, 1930 (30 U.S.C. 301-306); the Mineral Leasing Act for Acquired Lands (30 U.S.C. 351-359), as amended; the Act of March 3, 1909 (25 U.S.C. 396), as amended; the National Environmental Policy Act of 1969 (42 U.S.C. 4321, et seq.) as amended; the Act of May 11, 1938 (25 U.S.C. 396a-396q), as amended; the Act of February 28, 1891 (25 U.S.C. 397), as amended; the Act of May 29, 1924 (25 U.S.C. 398); the Act of March 3, 1927 (25 U.S.C. 398a-398e); the Act of June 30, 1919 (25 U.S.C. 399), as amended; R.S. § 441 (43 U.S.C. 1457), see also Attorney General's Opinion of April 2, 1941 (40 Op. Atty. Gen. 41); the Federal Property and Administrative Services Act of 1949 (40 U.S.C. 471, et seq.), as amended; the National Environmental Policy Act of 1969 (42 U.S.C. 4321 et seq.), as amended; the Act of December 12, 1980 (Pub. L. 96-514, 94 Stat. 2964); the Combined Hydrocarbon Leasing Act of 1981 (Pub. L. 97-78, 95 Stat. 1070); the Outer Continental Shelf Lands Act (43 U.S.C. 1331, et seq.), as amended; section 2 of Reorganization Plan No. 3 of 1950 (64 stat. 1262); Secretarial Order No. 3071 of January 19, 1982, as amended; and Secretarial Order 3087, as amended.

### Subpart A—General Provisions—[Reserved]

### Subpart B—Oil and Gas, General—[Reserved]

### Subpart C—Oil and Gas, Onshore

**§ 201.100 Responsibilities of the Associate Director for Royalty Management.**

The Associate Director is responsible for the collection of certain rents, royalties, and other payments; for the receipt of sales and production reports; for determining royalty liability; for maintaining accounting records; for any audits of the royalty payments and obligations; and for any and all other functions relating to royalty management on Federal and Indian oil and gas leases.

[47 FR 47768, Oct. 27, 1982. Redesignated at 48 FR 35641, Aug. 5, 1983]

### Subpart D—Oil, Gas and Sulphur, Offshore—[Reserved]

### Subpart E—Coal—[Reserved]

### Subpart F—Other Solid Minerals—[Reserved]

### Subpart G—Geothermal Resources—[Reserved]

### Subpart H—Indian Lands—[Reserved]

## PART 202—ROYALTY RATES AND RENTALS

Subpart A—General Provisions—[Reserved]

Subpart B—Oil and Gas, General—[Reserved]

Subpart C—Oil and Gas, Onshore

Sec.
202.100 Production records; rentals, royalties, and payments; drainage and waste.
202.101 Measurement of oil.
202.102 Measurement of gas.

Sec.
202.103 Royalty rate on oil; flat-rate leases.

### Subpart D—Oil, Gas and Sulphur, Offshore

202.150 Royalty on oil.
202.151 Minimum royalty.
202.152 Royalties.

### Subpart E—Coal—[Reserved]

### Subpart F—Other Solid Minerals—[Reserved]

### Subpart G—Geothermal Resources—[Reserved]

### Subpart H—Indian Lands—[Reserved]

AUTHORITY: The Act of February 25, 1920 (30 U.S.C. 181, et seq.), as amended; the Act of May 21, 1930 (30 U.S.C. 301-306); the Mineral Leasing Act for Acquired Lands (30 U.S.C. 351-359), as amended; the Act of March 3, 1909 (25 U.S.C. 396), as amended; the National Environmental Policy Act of 1969 (42 U.S.C. 4321, et seq.) as amended; the Act of May 11, 1938 (25 U.S.C. 396a-396q), as amended; the Act of February 28, 1891 (25 U.S.C. 397), as amended; the Act of May 29, 1924 (25 U.S.C. 398); the Act of March 3, 1927 (25 U.S.C. 398a-398e); the Act of June 30, 1919 (25 U.S.C. 399), as amended; R.S. § 441 (43 U.S.C. 1457), see also Attorney General's Opinion of April 2, 1941 (40 Op. Atty. Gen. 41); the Federal Property and Administrative Services Act of 1949 (40 U.S.C. 471, et seq.), as amended; the National Environmental Policy Act of 1969 (42 U.S.C. 4321 et seq.), as amended; the Act of December 12, 1980 (Pub. L. 96-514, 94 Stat. 2964); the Combined Hydrocarbon Leasing Act of 1981 (Pub. L. 97-78, 95 Stat. 1070); the Outer Continental Shelf Lands Act (43 U.S.C. 1331, et seq.), as amended; section 2 of Reorganization Plan No. 3 of 1950 (64 stat. 1262); Secretarial Order No. 3071 of January 19, 1982, as amended; and Secretarial Order 3087, as amended.

## Subpart A—General Provisions—[Reserved]

## Subpart B—Oil and Gas, General—[Reserved]

## Subpart C—Oil and Gas, Onshore

SOURCE: 47 FR 47773-47774, Oct. 27, 1982, unless otherwise noted. Redesignated at 48 FR 35641, Aug. 5, 1983.

### § 202.100 Production records; rentals royalties, and payments; drainage and waste.

The Associate Director for Royalty Management shall compile and maintain records of production and prices, determine royalties accrued, and estimate the amount and value of oil, gas, and other products wasted. The Associate Director shall render monthly to the lessee, or his agent, statements, showing the amount of oil, gas, casinghead or natural gasoline, propane, butane, or other hydrocarbons produced or sold and the amount or value of production accruing to the lessor as royalty from each lease; the loss by drainage or waste and the compensation due to the lessor as reimbursement; and, except as to any disposal of gas that shall have been determined by the Secretary of the Interior to be sanctioned by the laws of the United States and of the State in which it occurs, the amount and full value computed at a price of not less than 5 cents per 1,000 cubic feet, of all gas wasted by blowing, release, escape into the air, or otherwise. Also, as to producing leases of Indian lands and lands within naval petroleum reserves, the Associate Director shall determine rental liability, record rental royalty, and other payments, and maintain lease accounts.

### § 202.101 Measurement of oil.

*Lease production, pipeline runs.* For the convenience of the lessor and lessee, monthly statements of production and royalty shall be based in general on production recorded in pipeline runs or other shipments. When shipments are infrequent or do not approximate actual production, the Associate Director may require statements of production and royalty to be made on such other basis as he may prescribe, gains or losses in volume of storage being taken into account when appropriate. Evidence of all shipments of oil shall be furnished by pipeline or other run tickets signed by representatives of the lessee and of the purchaser who have witnessed the measurements reported and the determinations of gravity, temperature, and the percentage of impurities contained in the oil.

### § 202.102 Measurement of gas.

Gas of all kinds (except gas used for purposes of production on the leasehold or unavoidably lost) is subject to royalty.

### § 202.103 Royalty rate on oil; flat-rate leases.

The royalty on crude oil shall be the percentage (established by the terms of the lease) of the value or amount of the crude oil produced from the leased lands.

## Subpart D—Oil, Gas and Sulphur, Offshore

### § 202.150 Royalty on oil.

(a) The royalty on crude oil, including condensates separated from gas without the necessity of a manufacturing process, shall be a percentage of the value or amount of the crude oil produced from the leased area. The percentage shall be established by statute, regulation, or the provisions of the lease. No deduction shall be made for actual or theoretical transportation losses.

(b) Royalty is due on all oil which is (1) produced from a reservoir and sold by the lessee; (2) produced from a reservoir and used by the lessee for purposes of production from and operations upon the lease or unit area, or operations outside the lease or unit area, unless otherwise provided for in the lease; and (3) produced from a reservoir but lost, when such loss either was not specifically authorized or was avoidable. The royalty on oil may be based on production as products are moved from the lease. When conditions warrant, the Director may require royalty to be based on actual monthly production, including products remaining on the leased area. Evidence of all shipments shall be filed with the Director within 5 days, or longer periods when approved by the Director, after the oil has been shipped by pipeline or by other means of transportation. That evidence shall be signed by representatives of the lessee and by representatives of the purchaser or the transporter who witnessed the measurement reported. That evidence shall also note determinations of the gravity and temperature of the oil and the percentage of impurities contained in the oil.

[44 FR 61892, Oct. 26, 1979, as amended at 45 FR 81563, Dec. 11, 1980. Redesignated at 48 FR 35641, Aug. 5, 1983]

### § 202.151 Minimum royalty.

For leases which provide for minimum royalty payments, each lessee shall pay the minimum royalty specified in the lease at the end of each lease year beginning with the first lease year following a discovery on the lease.

[44 FR 38276, June 29, 1979. Redesignated at 47 FR 47006, Oct. 22, 1982, and at 48 FR 35641, Aug. 5, 1983]

### § 202.152 Royalties.

(a) Royalties on oil and gas shall be at the rate specified in the lease, unless the Secretary, in order to promote increased production on the leased area through direct, secondary or tertiary recovery means, reduces or eliminates any royalty set forth in the lease.

(b) The royalty on sulphur shall be not less than 5 percent of the gross production or value of the sulphur at the wellhead.

(c) Royalties on other minerals shall be at the rate specified in the notice of sale.

[44 FR 38276, June 29, 1979, as amended at 47 FR 25972, June 16, 1982. Redesignated at 47 FR 47006, Oct. 22, 1982, and at 48 FR 35641, Aug. 5, 1983]

## Subpart E—Coal—[Reserved]

## Subpart F—Other Solid Minerals—[Reserved]

## Subpart G—Geothermal Resources—[Reserved]

## Subpart H—Indian Lands—[Reserved]

# PART 203—RELIEF OR REDUCTION IN ROYALTY RATES

### Subpart A—General Provisions—[Reserved]

### Subpart B—Oil and Gas, General—[Reserved]

### Subpart C—Oil and Gas, Onshore

Sec.
203.100 Relief from operating, royalty, and rental requirements.

### Subpart D—Oil, Gas and Sulphur, Offshore

203.150 Reduction of royalty or net profit share.

### Subpart E—Coal

203.200 Royalties.

### Subpart F—Other Solid Minerals—[Reserved]

### Subpart G—Geothermal Resources—[Reserved]

### Subpart H—Indian Lands—[Reserved]

AUTHORITY: The Act of February 25, 1920 (30 U.S.C. 181, et seq.), as amended; the Act of May 21, 1930 (30 U.S.C. 301-306); the Mineral Leasing Act for Acquired Lands (30 U.S.C. 351-359), as amended; the Act of March 3, 1909 (25 U.S.C. 396), as amended; the National Environmental Policy Act of 1969 (42 U.S.C. 4321, et seq.) as amended; the Act of May 11, 1938 (25 U.S.C. 396a-396q), as amended; the Act of February 28, 1891 (25 U.S.C. 397), as amended; the Act of May 29, 1924 (25 U.S.C. 398); the Act of March 3, 1927 (25 U.S.C. 398a-398e); the Act of June 30, 1919 (25 U.S.C. 399), as amended; R.S. § 441 (43 U.S.C. 1457); see also Attorney General's Opinion of April 2, 1941 (40 Op. Atty. Gen. 41); the Federal Property and Administrative Services Act of 1949 (40 U.S.C. 471, et seq.), as amended; the National Environmental Policy Act of 1969 (42 U.S.C. 4321 et seq.), as amended; the Act of December 12, 1980 (Pub. L. 96-514, 94 Stat. 2964); the Combined Hydrocarbon Leasing Act of 1981 (Pub. L. 97-78, 95 Stat. 1070); the Outer Continental Shelf Lands Act (43 U.S.C. 1331, et seq.), as amended; section 2 of Reorganization Plan No. 3 of 1950 (64 stat. 1262); Secretarial Order No. 3071 of January 19, 1982, as amended; and Secretarial Order 3087, as amended.

## Subpart A—General Provisions—[Reserved]

## Subpart B—Oil and Gas, General—[Reserved]

## Subpart C—Oil and Gas, Onshore

### § 203.100 Relief from operating, royalty, and rental requirements.

Applications for any modification authorized by law of the royalty or rental requirements of a lease for lands of the United States shall be filed in triplicate in the office of the Associate Director.

CROSS REFERENCE: For regulations of the Bureau of Land Management relating to royalty and rental relief, and suspension of operations and production, see 43 CFR Parts 3100 to 3104.

[47 FR 47773, Oct. 27, 1982. Redesignated at 48 FR 35641, Aug. 5, 1983]

## Subpart D—Oil, Gas and Sulphur, Offshore

### § 203.150 Reduction of royalty or net profit share.

(a) In order to promote increased production on the lease area through direct, secondary, or tertiary recovery means, the Director may reduce or eliminate any royalty or net profit share on the entire leasehold, or on any deposit, tract, or portion thereof that is segregated for royalty purposes.

(b) An application for relief under paragraph (a) of this section must contain: the serial number of the lease; the name of the titleholder of record; a description of the area included in the lease; the number, location, and status of each well that has been drilled; and a tabulated statement for each month, covering a period of not less than 6 months prior to the date of filing the application, of the aggregate amount of minerals subject to royalty or net profit share computed in accordance with the lease and applicable regulations. Every application must also contain a detailed statement of the cost of operating the entire lease; the income from the sale of any products from the lease; and all other facts tending to show whether the wells can be successfully operated under the royalty or net profit share fixed in the lease. Full information shall be furnished as to whether royalties or payments out of production are paid to anyone other than the United States, the amounts paid, and the efforts made to reduce them. The applicant must also file agreements of the holders of the lease and of royalty holders to a reduction of all other royalties from the leasehold to an aggregate not in excess of one half the revised Government royalty or net profit share that would result if the request for a reduction were allowed.

(c) An application for relief under paragraph (a) of this section shall be filed in triplicate with the Director.

[44 FR 61892, Oct. 26, 1979; 45 FR 20464, Mar. 28, 1980. Redesignated at 48 FR 35641, Aug. 5, 1983]

## Subpart E—Coal

### § 203.200 Royalties.

(a) Provisions for the payment of advance royalty in lieu of continued operation are contained at 43 CFR 3483.4.

(b) An overriding royalty interest, production payment, or similar interest that exceeds 50 percent of royalty first payable to the United States under the Federal lease, or when added to any other overriding royalty interest exceeds that percentage, except those created in order to finance a mine, shall not be created by a Federal lease transfer or surface owner consent. However, when an interest in the Federal lease or operating agreement is transferred the transferor may retain an overriding royalty in excess of the above limitation if he shows that he has made substantial investments for improvements directly related to exploration, development, and mining on the land covered by the transfer that would justify a higher payment.

(c)(1) The District Mining Supervisor may waive, suspend, or reduce the rental on a Federal lease, or reduce the Federal royalty, but not advance royalty, on a Federal lease or portion thereof. The District Mining Supervisor shall take such action for the purpose of encouraging the greatest ultimate recovery of Federal coal, and in the interest of conservation of Federal coal and other resources, whenever in his judgment it is necessary to promote development, or if he finds that the Federal lease cannot be successfully operated under its terms. In no case shall the District Mining Supervisor reduce to zero any royalty on a producing Federal lease.

(2) An application for any of the above benefits shall be filed in triplicate in the office of the District Mining Supervisor. The application shall contain the serial number of the Federal lease, the Bureau of Land Management State Office, the name and address of the record title holder and any operator/lessee, and the description of the lands in the manner provided by 43 CFR 3471.1.

(i) Each application shall include the name and location of the mine; a map showing the extent of the existing, proposed or adjoining mining operations; a tabulated statement of the Federal coal mined, if any, and subject to Federal royalty for the existing or adjoining operation covering a period of not less than 12 months before the date of filing of the application; and existing Federal rental and royalty rates on Federal leases covered by the application.

(ii) Each application shall contain a detailed statement of expenses and costs of operating the entire mine, the income from the sale of coal, and all facts indicating whether the mine can be successfully operated under the Federal rental and royalty provisions fixed in the Federal lease or why the reduction is necessary to promote development. Where the application is for a reduction in Federal royalty, full information shall be furnished as to whether royalties or payments out of production are paid to parties other than the United States, the amounts so paid, and efforts made to reduce them, if any. If the Federal lease included in the application is not part of nor adjoining an operating mine, these detailed financial data may be obtained from another operating mine which is in close proximity and for which the District Mining Supervisor has deemed to have similar operating characteristics.

(iii) The applicant shall also file a copy of agreements, between the operator/lessee and the holders of any royalty interests or production payments other than those created in order to finance a mine, to a reduction of all other royalties from the Federal lease so that the total royalties and production payments owed the holders of these interests will not be in excess of one-half of the Federal royalties, should the Federal royalty reduction be granted.

(3) If the applicant does not meet the criteria of the rules of this Part, the District Mining Supervisor shall reject such application or request more data from the operator/lessee.

(4) If the applicant meets the criteria of the rules of this Part, the District Mining Supervisor shall act on the application.

(d) Operators/lessees shall submit Federal royalty payments as provided for in the Federal lease. The payment shall be made within 30 days after the end of the royalty reporting period for which the royalty accrued.

(e) Where Federal royalty is calculated on a cents-per-ton basis, it shall be based on the actual weight of coal and shall accrue on the sale or use of the coal. In addition, where coal placed in inventory exceeds that which the District Mining Supervisor determines to be required for normal mining and processing operations, the Federal royalty shall also be paid on that excess estimated tonnage in inventory.

(f) Where Federal royalty is calculated on a percentage basis, the value of coal for Federal royalty purposes shall be the gross value at the point of sale, normally the mine, except as provided at 30 CFR 203.200(h). For captive operations or other than armslength transactions, the District Mining Supervisor shall determine gross value and the point of sale.

(g) The gross value shall be the unit sale or contract price times the number of units sold, unless MMS determines that:

(1) A contract of sale or other business arrangement between the operator/lessee and a purchaser of some or all of the coal produced from the Federal lease is not a bona fide transaction between independent parties because it is based in whole or in part upon considerations other than the value of the coal; or,

(2) No consideration is received from some or all of such coal because the operator/lessee is consuming such coal or adding it to inventories, and for which Federal royalty is due and payable.

In either case, MMS shall determine the gross value of such coal taking into account:

(i) Any consideration received or paid by the operator/lessee in other related transactions.

(ii) The average price paid for coal of like quality produced from the same general area during the Federal lease month.

(iii) Contracts or other business arrangements, between coal producers and purchasers for the sale of coal other than coal produced under such Federal lease, which are comparable in terms, volume, time of execution, area of supply, and other circumstances.

(iv) Mining cost plus reasonable profit margin.

(v) Prices reported to a public utility commission and/or the Federal Energy Regulatory Commission.

(vi) Such other relevant factors as the District Mining Supervisor may deem appropriate.

(h) If additional preparation of the coal is performed prior to sale, such costs shall be deducted from the gross value in determining value for Federal royalty purposes. The District Mining Supervisor will allow such deductions only when, in his judgment and subject to his audit, the operator/lessee provides an accurate account of the costs incurred. However, the following shall not be deducted from the gross value in determining value for Federal royalty purposes: costs of primary crushing, storing, and loading; treatment with chemicals to prevent freezing; treatment with oil to suppress dust in transit; and, other preparation of the coal which in the judgment of the District Mining Supervisor does not enhance the quality of the coal.

(i) If a Federal coal lease that provides for a percentage Federal royalty is developed by *in situ* technology, the gross value of production for the purpose of computing royalty shall be determined by MMS.

(j) If a Federal coal lease that provides for a cents-per-ton Federal royalty is developed by *in situ* technology, MMS will establish a procedure for estimating tonnage for royalty purposes.

(k) In the event waste piles or slurry ponds are reworked to recover coal, or if a market becomes available to sell the waste products containing coal, the operator/lessee shall pay Federal royalty at a rate specified in the Federal lease at the time of recovery. The operator/lessee shall make payment based on the Federal share of the coal when the coal is recovered regardless of whether it is stored on Federal lands. Where such waste containing coal from a Federal lease is mixed with similar waste from private lands, the operator/lessee shall maintain accurate records from which Federal ownership of coal in the waste may be determined. However, nothing in this section requires payment of a Federal royalty on Federal coal for which a Federal royalty has already been paid.

[48 FR 35642, Aug. 5, 1983]

## Subpart F—Other Solid Minerals—[Reserved]

## Subpart G—Geothermal Resources—[Reserved]

## Subpart H—Indian Lands—[Reserved]

# PART 206—PRODUCT VALUATION

### Subpart A—General Provisions—[Reserved]

### Subpart B—Oil and Gas, General—[Reserved]

### Subpart C—Oil and Gas, Onshore

Sec.
206.100 Waste prevention; beneficial use.
206.101 Determination of gasoline content of natural gas.
206.102 Quantity basis for computing royalties on natural gasoline, butane, propane, and other liquid hydrocarbon substances extracted from gas.
206.103 Value basis for computing royalties.
206.104 Royalty rates on oil; sliding- and step-scale leases (public land only).
206.105 Royalty on gas.
206.106 Royalty on casing-head or natural gasoline, butane, propane, or other liquid hydrocarbon substances extracted from gas.
206.107 Royalty on drip gasoline or other natural condensate.

### Subpart D—Oil, Gas and Sulphur, Offshore

206.150 Value basis for computing royalties.
206.151 Royalty on unprocessed gas.
206.152 Royalty on processed gas and constituent products.

### Subpart E—Coal—[Reserved]

### Subpart F—Other Solid Minerals—[Reserved]

### Subpart G—Geothermal Resources

206.300 Value of geothermal production for computing royalties.
206.301 Computation of royalties.

### Subpart H—Indian Lands—[Reserved]

AUTHORITY: The Act of February 25, 1920 (30 U.S.C. 181, et seq.) as amended; the Act of May 21, 1930 (30 U.S.C. 301-306); the Mineral Leasing Act for Acquired Lands (30 U.S.C. 351-359), as amended; the Act of March 3, 1909 (25 U.S.C. 396), as amended; the Act of May 11, 1938 (25 U.S.C. 396a-396q), as amended; the Act of February 28, 1891 (25 U.S.C. 397), as amended; the Act of May 29, 1924 (25 U.S.C. 398); the Act of March 3, 1927 (25 U.S.C. 398a-398e); the Act of June 30, 1919 (25 U.S.C. 399), as amended; R.S. § 441 (43 U.S.C. 1457), see also Attorney General's Opinion of April 2, 1941 (40 Op. Atty. Gen. 41); the Federal Property and Administrative Services Act of 1949 (40 U.S.C. 471 et seq.), as amended; the National Environmental Act of 1969 (42 U.S.C. 4321 et seq.); as amended; the Act of December 12, 1980 (Pub. L. 96-514, 94 Stat. 2964); and the Hydrocarbon Leasing Act of 1981 (Pub. L. 97-78, 95 Stat. 1070); the Outer Continental Shelf Lands Act (43 U.S.C. 1331, et seq.) as amended; the Geothermal Act of 1970 (30 U.S.C. 1001 et seq.), as amended; section 2 of Reorganization Plan No. 3 of 1950 (64 stat. 1262); Secretarial Order No. 3071 of January 19, 1982, as amended; and Secretarial Order No. 3087, as amended.

[illegible] AVAILABLE

## Subpart A—General Provisions—[Reserved]

## Subpart B—Oil and Gas, General—[Reserved]

## Subpart C—Oil and Gas, Onshore

SOURCE: 47 FR 47773-47775, Oct. 27, 1982, unless otherwise noted. Redesignated at 48 FR 35641, Aug. 5, 1983.

### § 206.100 Waste prevention; beneficial use.

The lessee is obligated to prevent the waste of oil or gas, and to avoid physical waste of gas, the lessee shall consume it beneficially or market it or return it to the productive formation. If waste of gas occurs, the lessee shall pay the lessor the full value of all gas wasted by blowing, release, escape, or otherwise at a price not less than 5 cents for each 1,000 cubic feet unless, on application by the lessee, such waste of gas under the particular circumstances involved shall be determined by the Secretary to be sanctioned by the laws of the laws of the United States and of the State in which it occurs.

### § 206.101 Determination of gasoline content of natural gas.

Tests to determine the gasoline content of gas delivered to plants manufacturing gasoline are required to check plant efficiency and to obtain an equitable basis for allocating the gasoline output of any plant to the several sources from which the gas treated in derived.

### § 206.102 Quantity basis for computing royalties on natural gasoline, butane, propane, and other liquid hydrocarbon substances extracted from gas.

The primary quantity basis for computing monthly royalties on casinghead or natural gasoline, butane, propane, or other liquid hydrocarbon substances extracted from gas is the monthly net output of the plant at which the substances are manufactured, "net output" being defined as the quantity of each such substance that the plant produces for sale.

(a) If the net output of a plant is derived from the gas obtained from only one leasehold, the quantity of gasoline or other liquid hydrocarbon substances of which computations of royalty for the lease are based is the net output of the plant.

(b) If the net gasoline output of a plant is derived from gas obtained from several leaseholds producing gas of uniform gasoline content, the proportion of net output of gasoline allocable to each lease as a basis for computing royalty will be determined by dividing the amount of gas delivered to the plant from each leasehold by the total amount of gas delivered by the plant from all leaseholds.

(c) If the net gasoline output of a plant is derived from gas obtained from several leaseholds producing gas of diverse gasoline content, the proportion of net output of gasoline allocable to each leasehold as a basis for computing royalty will be determined by multiplying the amount of gas delivered to the plant from the leaseholds by the gasoline content of the gas and dividing the arithmetical product thus obtained by the sum of the simular arithmetical products separately obtained for all leaseholds from which gas is delivered to the plant.

(d) If the net output of butane, propane, or other liquid hydrocarbon substances of a plant is derived from gas obtained from several leaseholds, the proportion of net output of such substances allocable to each leasehold as a basis for computing royalty will be determined by substituting the butane, propane, or other liquid hydrocarbon content for the gasoline content and following the method outlined in paragraph (b) or (c) of this section, whichever is applicable: *Provided*, That when in the judgment of the Associate Director, it is impracticable to test gas to determine the content of butane, propane, or other liquid hydrocarbon substances, the gasoline content will be used in determining the proportion of the net output of such substances allocable to each leasehold.

(e) The Associate Director is authorized, whenever in his judgment neither method prescribed in paragraph (b) and (c) of this section is practicable, to estimate the production of natural gasoline, butane, propane, or other liquid hydrocarbon substances from any leasehold from (1) the quantity of gas produced from the leasehold and transmitted to the extraction plant, (2) the gasoline, butane, propane, or other liquid hydrocarbon content of such gas as determined by test, and (3) a factor based on plant efficiency or recovery and so determined as to insure full protection of the royalty interest of the lessor.

### § 206.103 Value basis for computing royalties.

The value of production, for the purpose of computing royalty, shall be the estimated reasonable value of the product as determined by the Associate Director due consideration being given to the highest price paid for a part or for a majority of production of like quality in the same field, to the price received by the lessee, to posted prices, and to other relevant matters. Under no circumstances shall the value of production of any of said substances for the purposes of computing royalty be deemed to be less than the gross proceeds accruing to the lessee from the sale thereof or less than the value computed on such reasonable unit value as shall have been determined by the Secretary. In the absence of good reason to the contrary, value computed on the basis of the highest price per barrel, thousand cubic feet, or gallon paid or offered at the time of production in a fair and open market for the major portion of like-quality oil, gas, or other products produced and sold from the field or area where the leased lands are situated will be considered to be a reasonable value.

### § 206.104 Royalty rates on oil; sliding- and step-scale leases (public land only).

Sliding- and step-scale royalties are based on the average daily production per well. The Supervisor shall specify which wells on a leasehold are commercially productive, including in that category all wells, whether produced or not, for which the annual value of permissible production would be greater than the estimated reasonable annual lifting cost, but only wells which yield a commercial volume of production during at least part of the month shall be considered in ascertaining the average daily production per well. The average daily production per well for a lease is computed on the basis of a 28-, 29-, 30-, or 31-day month (as the case may be), the number of wells on the leasehold counted as producing, and the gross production from the leasehold. (Tables for computing royalty on the sliding-scale and on the step-scale basis may be obtained upon application to the Associate Director.) The Supervisor will determine which commercially productive wells shall be considered each month as producing wells for the purpose of computing royalty in accordance with the following rules, and in his discretion may count as producing any commercially productive well shut-in for conservation purposes.

(a) For a previously producing leasehold, count as producing for every day of the month each previously producing well that produced 15 days or more during the month, and disregard wells that produced less than 15 days during the month.

(b) Wells approved by the Supervisor as input wells shall be counted as producing wells for the entire month if so used 15 days or more during the month and shall be disregarded if so used less than 15 days during the month.

(c) When the initial production of a leasehold is made during the calendar month, compute royalty on the basis of producing well-days.

(d) When a new well is completed for production on a previously producing leasehold and produces for 10 days or more during the calendar month in which it is brought in, count such new wells as producing every day of the month, in arriving at the number of producing well-days. Do not count any new well that produces for less than 10 days during the calendar month.

(e) Consider "head wells" that make their best production by intermittent pumping or flowing as producing every day of the month, provided they are regularly operated in this manner, with approval of the Supervisor.

(f) For previously producing leaseholds on which no wells produced for 15 days or more, compute royalty on a basis of actual producing well-days.

(g) For previously producing leaseholds on which no wells were producing during the calendar month but from which oil was shipped, compute royalty at the same royalty percentage as that of the last preceding calendar month in which production and shipments were normal.

(h) Rules for special cases not subject to definition, such as those arising from averaging the production from two distinct sands or horizons when the production of one sand or horizon is relatively insignificant compared to that of the other, shall be made by the Associate Director as need arises.

(i)(1) In the following summary of operations on a typical leasehold for the month of June, the wells considered for the purpose of computing royalty on the entire production of the property for the months are indicated.

| Well No | Record | Count (marked X) |
|---|---|---|
| 1 | Produced full time for 30 days | X |
| 2 | Produced for 26 days down 4 days for repairs | X |
| 3 | Produced for 28 days down June 5, 12 hours rods, June 14 6 hours engine down, June 26, 24 hours, pulling rods and tubing | X |
| 4 | Produced for 12 days, down June 13 to 30 | |
| 5 | Produced for 8 hours every day (head well) | X |
| 6 | Idle producer (not operated) | |
| 7 | New well, completed June 17, produced for 14 days | X |
| 8 | New well, completed June 22, produced for 9 days | |

(2) In this example, there are eight wells on the leasehold, but wells Nos. 4, 6, and 8 are not counted in computing royalties. Wells Nos. 1, 2, 3, 5, and 7 are counted as producing for 30 days. The average production per well per day is determined by dividing the total production of the leasehold for the month (including the oil produced by wells 4 and 8) by 5, the number of wells counted as producing, and dividing the quotient thus obtained by the number of days in the month.

### § 206.105 Royalty on gas.

The royalty on gas shall be the percentage established by the terms of the lease of the value or amount of the gas produced.

(a) Royalty accrues on dry gas, whether produced as such or as residue gas after the extraction of gasoline.

(b) If the lessee derives revenue on gas from two or more products, a royalty normally will be collected on all such products.

(c) For the purpose of computing royalty, the value of wet gas shall be either the gross proceeds accruing to the lessee from the sale thereof or the aggregate value determined by the Secretary of all commodities, including residue gas, obtained therefrom, whichever is greater.

### § 206.106 Royalty on casing-head or natural gasoline, butane, propane, or other liquid hydrocarbon substances extracted from gas.

A royalty as provided in the lease shall be paid on the value of one-third (or the lessee's portion if greater than one-third) of all casing-head or natural gasoline, butane, propane, or other liquid hydrocarbon substances extracted from the gas produced from the leasehold. The value of the remainder is an allowance for the cost of manufacture, and no royalty thereon is required. The value shall be so determined that the minimum royalty accruing to the lessor shall be the percentage established by the lease of the amount or value of all extracted hydrocarbon substances accruing to the lessee under an arrangement, by contract or otherwise, for extraction and sale that has been approved by the Associate Director.

(a) When a minimum price established by the Secretary is used in determining the value of natural gasoline accruing to the lessee, the volume of such gasoline may be corrected when deemed necessary by the Associate Director to such standard and by such method as may be approved by the Associate Director, in order that volumetric differences between natural gasolines of various specifications may be equitably adjusted.

(b) The present policy is to allow the use of a reasonable amount of dry gas for operation of the gasoline plant, the amount allowed being determined or approved by the Associate Director, but no allowance shall be made for boosting residue gas, or other expenses incidental to marketing.

### § 206.107 Royalty on drip gasoline or other natural condensate.

The royalty on all drip gasoline, or other natural condensate recovered from gas produced from the leased lands without resort to manufacturing process, shall be the same percentage as provided in the lease for other oil, except that such substance, if processed in a casing-head gasoline plant, shall be treated for royalty purposes as though it were gasoline.

## Subpart D—Oil, Gas and Sulphur, Offshore

### § 206.150 Value basis for computing royalties.

The value of production shall never be less than the fair market value. The value used in the computation of royalty shall be determined by the Director. In establishing the value, the Director shall consider: (a) The highest price paid for a part or for a majority of like-quality products produced from the field or area; (b) the price received by the lessee; (c) posted prices; (d) regulated prices; and (e) other relevant matters. Under no circumstances shall the value of production be less than the gross proceeds accruing to the lessee from the disposition of the produced substances or less than the value computed on the reasonable unit value established by the Secretary.

[44 FR 61892, Oct. 26, 1979. Redesignated at 48 FR 35641, Aug. 5, 1983]

### § 206.151 Royalty on unprocessed gas.

Royalty is due on all gas which is (a) produced from a reservoir and sold by the lessee; (b) produced from a reservoir and used by the lessee for purposes of production from and operations upon the lease or unit area, or operations outside the lease or unit area, unless otherwise provided for in the lease; (c) produced from a reservoir but lost (vented or flared), when such loss either was not specifically authorized or was avoidable. Royalty is not due on gas or liquids produced from and reinjected to a reservoir, within the same lease or unit, until such time as they are finally produced from a reservoir. When gas is sold without processing for the recovery of constituent products the royalty thereon shall be a percentage, established by the terms of the lease, of the value or amount of the gas and constituent products. The value of wet gas and entrained liquids may be established by adjusting the value of the gas less entrained liquids using a British thermal unit (Btu) or other appropriate adjustment factor. The value shall not be less than that which would accrue by computing royalty in accordance with § 250.67(a) through (d) of this part.

[45 FR 81563, Dec. 11, 1980; 46 FR 19935, Apr. 2, 1981. Redesignated at 48 FR 35641, Aug. 5, 1983]

### § 206.152 Royalty on processed gas and constituent products.

(a) When gas is processed for the recovery of constituent products, a royalty established by the terms of the lease will accrue on the value or amount of:

(1) All residue gas remaining after processing, and

(2) All natural gasoline, butane, propane, or other substances extracted from the gas. A reasonable allowance, determined by the Director and based upon regional plant practices and actual plant costs and other pertinent factors, may be made for the cost of processing and may be deducted from the royalty payment due on said constituent substances. However, the reasonable allowance shall not exceed two-thirds of the value of the substances extracted unless the Director determines that a greater allowance is in the national interest.

(b) Under no circumstances shall the amount of royalty on the residue gas and extracted substances be less than the amount which the Director determines would be payable if the gas had been sold without processing.

(c) In determining the value of natural gasoline, the volume of such gasoline shall be adjusted to a set standard, by a method approved or prescribed by the Director, when such adjustments are necessary to account for the volumetric differences between natural gasolines of various specifications.

(d) No allowance shall be made for boosting residue gas or other expenses incidental to marketing.

(e) The lessee, with the approval of the Director, may establish a gross value per unit of 1,000 cubic feet of gas on the lease or at the wellhead for the purpose of computing royalty on gas processed for the recovery of constituent substances. When a gross value is so established, it shall be high enough to insure that the royalty due the United States is not less than that which would accrue by computing royalties in accordance with the provisions of paragraphs (a) through (d) of this section.

[44 FR 61892, Oct. 26, 1979. Redesignated at 48 FR 35641, Aug. 5, 1983]

## Subpart E—Coal—[Reserved]

## Subpart F—Other Solid Minerals—[Reserved]

## Subpart G—Geothermal Resources

### § 206.300 Value of geothermal production for computing royalties.

(a) The value of geothermal production from the leased premises for the purpose of computing royalties shall be the reasonable value of the energy and the byproducts attributable to the lease as determined by the Supervisor. In determining the reasonable value of the energy and the byproducts the Supervisor shall consider:

(1) The highest price paid for a majority of the production of like quality in the same field or area;

(2) The total consideration accruing to the lessee from any disposition of the geothermal production;

(3) The value of the geothermal production used by the lessee;

(4) The value and cost of alternate available energy sources and byproducts;

(5) The cost of exploration and production, exclusive of taxes;

(6) The economic value of the resource in terms of its ultimate utilization;

(7) Production agreements between producer and purchaser; and

(8) Any other matters which he may consider relevant.

(b) Under no circumstances shall the value of any geothermal production for the purposes of computing royalties be less than:

(1) The total consideration accruing to the lessee from the sale thereof in cases where geothermal resources are sold by the lessee to another party;

(2) That amount which is the value of the end product attributable to the geothermal resource produced from a particular lease where geothermal resources are not sold by the lessee before being utilized, but are instead directly used in manufacturing, power production, or other industrial activity; or

(3) When a part of the resource only is utilized by the lessee and the remainder sold, the sum of the value of the end product attributable to the geothermal resource and the sales price received for the geothermal resources.

[38 FR 35068, Dec. 21, 1973. Redesignated at 48 FR 35641, Aug. 5, 1983]

### § 206.301 Computation of royalties.

(a) The value of geothermal production from a particular lease as determined pursuant to § 206.300 hereof, shall be apportioned between geothermal steam, heat, and other forms of energy and the byproducts.

(b) The royalties payable shall be the sum of (1) the amount resulting from the multiplication of the value attributable to the geothermal steam, heat, and other forms of energy by the royalty rate set for such forms of geothermal energy in the lease and (2) the amount resulting from the multiplication of the value attributable to byproducts by the royalty rate for byproducts set in the lease.

[38 FR 35068, Dec. 21, 1973. Redesignated at 48 FR 35641, Aug. 5, 1983]

## Subpart H—Indian Lands—[Reserved]

## PART 207—APPROVAL OF SALES AGREEMENTS OR CONTRACTS COVERING THE DISPOSAL OF OIL AND GAS LEASE PRODUCTS (NOT APPLICABLE TO INDIAN OR NAVAL PETROLEUM RESERVE LANDS)

Sec.
207.1 What this part does.
207.2 Filing of contracts.
207.3 Contracts made pursuant to new form leases.
207.4 Contracts made pursuant to old form leases.
207.5 Requests for approval.
207.6 Pending contracts.
207.7 Appeals.

Authority: R.S. 161, as amended, sec. 32, 41 Stat. 450, sec. 10, 61 Stat. 915; 5 U.S.C. 301, 30 U.S.C. 189, 359.

Source: 16 FR 10519, Oct. 16, 1951, unless otherwise noted. Redesignated at 48 FR 35642, Aug. 5, 1983.

Editorial Note: Nomenclature changes to this part appear at 47 FR 28369, June 30, 1982.

### § 207.1 What this part does.

This part prescribes the procedure for the filing, and approval when required, of sales agreements or contracts made by lessees or their operators covering the disposal of products from oil and gas leases on public domain lands and acquired lands of the United States.

### § 207.2 Filing of contracts.

Copies of all contracts or agreements, whether or not approval is required or requested as provided in this part, must be filed in duplicate with the oil and gas supervisor of the Minerals Management Service not later than 30 days after the effective date thereof.

Note: As used in Part 207 the term "oil and gas supervisor" means the appropriate Deputy Minerals Manager of the Minerals Management Service.

[16 FR 10519, Oct. 16, 1951, as amended at 45 FR 41411, June 19, 1980; 47 FR 28370, June 30, 1982. Redesignated at 48 FR 35642, Aug. 5, 1983]

### § 207.3 Contracts made pursuant to new form leases.

On November 29, 1950, a new form of lease was adopted (Form 4-1158, 15 FR 8585), containing provisions whereby the lessee agrees that nothing in any contract or other arrangement made for the sale or disposal of oil, gas, natural gasoline, and other products of the leased land, shall be construed as modifying any of the provisions of the lease, including, but not limited to, provisions relating to gas waste, taking royalty in kind, and the method of computing royalties due as based on a minimum valuation and in accordance with the oil and gas operating regulations. A contract or agreement pursuant to a lease containing such provisions may be made without obtaining approval of the United States as lessor, but must be filed as provided in § 207.2.

### § 207.4 Contracts made pursuant to old form leases.

(a) Old form leases are those containing provisions prohibiting sales or disposal of oil, gas, natural gasoline, and other products of the lease except in accordance with a contract or other arrangement approved by the Secretary of the Interior, or by the Director of the Minerals Management Service or his representative. A contract or agreement made pursuant to an old form lease may be made without obtaining approval if the contract or agreement either contains the substance of or is accompanied by the stipulation set forth in paragraph (b) of this section, signed by the seller (lessee or operator).

(b) The stipulation the substance of which must be included in the contract, or be made the subject matter of a separate instrument property identifying the leases affected thereby, is as follows:

> It is hereby understood and agreed that nothing in the within contract or in any approval thereof shall be construed as affecting any of the relations between the United States and its lessee, particularly in matters of gas waste, taking royalty in kind and the method of computing royalties due as based on a minimum valuation and in accordance with the terms and provisions of the oil and

gas operating regulations applicable to the lands covered by said contract.

(c) A contract or agreement not containing the substance of nor accompanied by the stipulation set forth in paragraph (b) of this section may, if the provisions thereof are otherwise acceptable, be approved by the oil and gas supervisor subject to the condition that nothing in such contract or agreement or in the approval thereof shall be construed as affecting any of the relations between the United States and its lessee, including, but not limited to, the matters enumerated in paragraph (b) of this section.

### § 207.5 Requests for approval.

A contract or agreement coming within the provisions of § 207.3 or § 207.4(a) may be approved by the oil and gas supervisor if request for approval is made by the seller and the provisions thereof are acceptable.

### § 207.6 Pending contracts.

Contracts filed but not acted upon before the effective date of this revision shall be acted upon in accordance with the regulations as revised in this part.

### § 207.7 Appeals.

An appeal may be taken as provided in Part 290 of this chapter from any order or decision issued under the regulations in this part.

[38 FR 10002, Apr. 23, 1973. Redesignated at 48 FR 35642, Aug. 5, 1983]

## PART 208—DISPOSAL OF GOVERNMENT ROYALTY OIL

Sec.

208.1 Statutory authority.
208.2 Definitions.
208.3 Policy.
208.4 Exchange agreements.
208.5 Application; contents.
208.6 Action by the Supervisor.
208.7 Action by the Secretary.
208.8 Notices.

Authority: Secs. 32, 36, 41 Stat. 450, 451, as amended; 61 Stat. 913, 30 U.S.C. 189, 192, 359.

Editorial Note: Nomenclature changes to this part appear at 47 FR 28369 and 28370, June 30, 1982.

### § 208.1 Statutory authority.

Section 36 of the Mineral Leasing Act of February 25, 1920 (30 U.S.C. 192) authorizes the Secretary of the Interior to sell royalty oil accruing to the United States under oil and gas leases issued pursuant to that Act. The Act of July 13, 1946 (60 Stat. 533), which amended section 36 in order to assist small business enterprise, authorizes and directs the Secretary, when he determines that sufficient supplies of crude oil are not available in the open market to refineries not having their own source of supply for crude oil, to grant a preference to such refineries in the sale of royalty oil for processing or use in such refineries and not for resale in kind. The Act of July 13, 1946, also provides that the sale of royalty oil to such refineries may be at private sale at not less than the market price and that in selling such oil the Secretary may at his discretion prorate such oil among such refineries in the area in which the oil is produced. The provisions of said section 36, as amended, also are applicable to royalty oil accruing to the United States under leases issued pursuant to the Mineral Leasing Act for Acquired Lands of August 7, 1947 (61 Stat. 913). The Act of September 1, 1949, provided for the elimination of premium payments in then existing contracts entered into pursuant to the Act of July 13, 1946.

[34 FR 1019, Jan. 23, 1969. Redesignated at 48 FR 35642, Aug. 5, 1983]

### § 208.2 Definitions.

The following definitions shall be applicable to the regulations in this part:

(a) "Eligible refiners" under the Act of July 13, 1946, shall be owners of existing refineries (including refineries not in operation) who qualify as a small business enterprise under the rules of the Small Business Administration and who are unable to purchase in the open market an adequate supply of crude oil to meet the needs of their existing refinery capacities.

(b) "Secretary" shall be the Secretary of the Interior.

(c) "Supervisor" shall be the Area Oil and Gas Supervisor, of the Minerals Management Service; a representative of the Secretary, subject to the direction and supervisory authority of the Director, Minerals Management Service and the appropriate Minerals Manager, Minerals Management Service, authorized and empowered to supervise and direct oil and gas operations and to perform other duties prescribed in the regulations in Part 221 of this chapter.

NOTE: As used in Part 208 the term "Supervisor" means the appropriate Deputy Minerals Manager of the Minerals Management Service.

(d) "Area" is the geographic area over which a supervisor is authorized to exercise supervisory jurisdiction.

(e) "Preference eligible refiners" shall be eligible refiners applying for purchase of royalty oil produced in a given Area for use in their refineries located within that area.

(f) "Market price" shall be (1) the highest price per barrel regularly posted, published, or generally paid, or offered, by any principal purchaser of crude oil of equal A.P.I. gravity in the field where produced, or (2) if there are no postings in the field, the highest price posted in the nearest field where a comparable grade of crude oil is produced and sold, or (3) the true value as determined by the Supervisor when in his judgment such highest price regularly posted, published, or generally paid or offered in the same field or the nearest field is found by him to be less than the true value of the royalty oil. In no event shall the "market price" be less than the estimated reasonable value which the Supervisor would determine as the value of production, if royalties on the production in question were being paid by the lessee rather than being taken in kind.

[16 FR 10519, Oct. 16, 1951, as amended at 38 FR 10001, Apr. 23, 1973; 45 FR 41411, June 19, 1980; 47 FR 28369 and 28370, June 30, 1982. Redesignated at 48 FR 35642, Aug. 5, 1983]

### § 208.3 Policy.

Except in times of general unavailability of an adequate supply of crude oil in the United States, or when special circumstances warrant other action, as determined by the Secretary, government royalty oil available for disposal pursuant to the Act of February 25, 1920, as amended, will be sold in accordance with the regulations in this part. Such oil will be sold only to "eligible refiners" under the Act of July 13, 1946, and all such sales will be made at the "market price" without premium or bonus; however, in the case of contracts which become effective or which are extended on or after June 1, 1976, a charge for the cost of administration in an amount equal to one-half percent of the market price will be made for each barrel of government royalty oil sold. "Preference eligible refiners" will be given a preference over other "eligible refiners" in the purchase of such oil. When applications are filed by two or more "preference eligible refiners" for the same oil, the oil will be allocated among such applicants by a drawing or on an equitable prorated basis as determined by the Supervisor prior to execution of contracts for sale of such oil. When applications are filed by two or more "eligible refiners" for the same oil, and no applications for the same oil are filed by "Preference eligible refiners," or their needs are adequately supplied with only a part of the royalty oil available, the royalty oil available to such "eligible refiners" shall be similarly allocated among them by the Supervisor.

[41 FR 18073, Apr. 30, 1976. Redesignated at 48 FR 35642, Aug. 5, 1983]

### § 208.4 Exchange agreements.

The Act of July 13, 1946, requires refiners granted a preference to process or use in such refineries and not resell in kind royalty oil purchased thereunder. Agreements providing for the exchange of crude oil purchased under the Act for other crude oil on a volume or equivalent value basis will not be construed as constituting a resale in kind prohibited by the Act. Where an exchange agreement has been entered into or is contemplated with regard to royalty oil available for sale, full information relative thereto must be furnished either at the time of filing application to purchase royalty oil or at such later date as specified by the Supervisor.

[34 FR 1019, Jan. 23, 1969. Redesignated at 48 FR 35642, Aug. 5, 1983]

### § 208.5 Application; contents.

An eligible refiner may file an application with the Supervisor of the Area in which the oil is produced. Such application shall be filed in triplicate and must be accompanied by a detailed statement containing the following information:

(a) The full name and address of the applicant; the location of his refinery or refineries; a complete disclosure of applicant's affiliation or association with any other refiner of oil if such relationship exists; and reasons for believing that applicant is entitled to a preference under the Act of July 13, 1946, including a full showing of efforts made to purchase the needed oil in the open market.

(b) The capacity of the refinery to be supplied and the amount, source, and grade of all crude oil currently available to the applicant refiner from his own production or by purchase.

(c) The minimum amount and grade of additional crude oil needed to meet existing refinery commitments or existing refinery capacity, the field or fields which the refiner believes offer a potential source of crude-oil supply and the available transportation facilities which the refiner proposes to utilize.

(d) A tabulation for the preceding 12 months or for the last 12 months of operation of the amount and grade of crude oil refined each month, and the kind and amount of the principal finished products.

[16 FR 10519, Oct. 15, 1961, as amended at 38 FR 10001, Apr. 23, 1973. Redesignated at 48 FR 35642, Aug. 5, 1983]

### § 208.6 Action by the Supervisor.

The Supervisor shall examine each application filed pursuant to this part and where he finds that the showing submitted is inadequate or unsatisfactory, such additional showing shall be required as may be deemed necessary. Also, in his discretion, he may notify the lessees or operators of the Federal oil and gas leases involved and the then purchaser or purchasers of the oil of his receipt of the application and allow them not in excess of 30 days within which to submit comments. When royalty oil is available for purchase in his Area, the Supervisor shall make inquiries of other small refineries having refineries in his Area as to their interest in filing applications to purchase royalty oil. He shall also make similar inquiries of any other small refiners having refineries located outside his Area when he has reason to believe they would be interested in filing applications to purchase royalty oil produced within his Area. Thereafter, he shall make appropriate recommendations for consideration by the Director, Minerals Management Service, and the Secretary of the Interior.

[16 FR 10519, Oct. 15, 1961, as amended at 38 FR 10001, Apr. 23, 1973. Redesignated at 48 FR 35642, Aug. 5, 1983]

### § 208.7 Action by the Secretary.

When the Secretary makes a decision to sell royalty oil in any given Area, he shall specify or approve the manner in which the sale is to be effected, including the form of contract to be used. At such time he may authorize the Supervisor or another official of the Minerals Management Service to execute the contract, or contracts, of sale on behalf of the United States, to approve exchange agreements, and to determine the amount and type of bond or other security to be required from the purchaser under such contract or contracts.

[16 FR 10519, Oct. 15, 1961, as amended at 38 FR 10001, Apr. 23, 1973. Redesignated at 48 FR 35642, Aug. 5, 1983]

### § 208.8 Notices.

Prior to any requirement that royalty oil be delivered in kind, the Supervisor shall notify each lessee or operator under the Federal oil and gas leases involved of the requirement at least 30 days in advance of the effective date of that requirement; where it is determined to terminate the delivery of royalty oil in kind, the Supervisor shall, if practicable in his opinion, give any affected lessee or operator notice of the change in requirements at least 30 days in advance.

[37 FR 441, Jan. 12, 1972. Redesignated at 48 FR 35642, Aug. 5, 1983]

# PART 209—ACQUISITION AND DISPOSITION OF FEDERAL ROYALTY INTERESTS TAKEN IN KIND

### Subpart A—General Provisions

Sec.
209.001 Purpose and authority.
209.002 Definitions.

### Subpart B—Disposition of Outer Continental Shelf Royalty Oil

209.101 Purpose and scope.
209.102 Definitions.
209.110 OCS royalty oil allocation.
209.120 Reimbursement to lessee for transportation.
209.130 Exchange agreements.
209.140 Application; contents.
209.141 Action by the designated official.
209.142 Action by DOI.
209.150 Notices.

AUTHORITY: Act of August 7, 1953, ch. 345, secs. 5, 6 and 8, 67 Stat. 464, 465, 468 (43 U.S.C. 1334, 1335 and 1337), as amended by secs. 204, 205 and 208, Pub. L. 95-372, 92 Stat. 636-640, 640-646, 666-668.

SOURCE: 45 FR 9532, Feb. 12, 1980, unless otherwise noted. Redesignated at 48 FR 1182, Jan. 11, 1983, and at 48 FR 35642, Aug. 5, 1983.

## Subpart A—General Provisions

### § 209.001 Purpose and authority.

The regulations in this Part 209 specify the procedures, terms, and conditions for the acquisition and disposition of Federal royalty interests taken in kind and are issued pursuant to OCSLA, 43 U.S.C. 1331 *et seq.*, as amended by Pub. L. 95-372, 92 Stat. 629.

[45 FR 9532, Feb. 12, 1980. Redesignated and amended at 48 FR 1182, Jan. 11, 1983. Redesignated at 48 FR 35641, Aug. 5, 1983]

### § 209.002 Definitions.

For purposes of this Part 209—

"*Notice of Availability of Royalty Oil*" means a notice published in the FEDERAL REGISTER by DOI to advise interested parties that royalty oil is being made available for purchase by qualified small refiners or purchasers and the approximate volume of oil which may be available.

"*Operator*" means the owner of operating rights or the designee of such parties who own the operating rights including the lessee, who performs the necessary functions relating to oil and gas production.

"*Refinery capacity*" means actual certified refining capacity on a barrel per calendar day basis, as determined by the Economic Regulatory Administration of DOE.

## Subpart B—Disposition of Outer Continental Shelf Royalty Oil

### § 209.101 Purpose and scope.

The regulations in this Subpart B establish the policy and procedures for the disposition of royalty oil taken in kind from Federal OCS oil and gas leases issued pursuant to OCSLA.

### § 209.102 Definitions.

For purposes of this Subpart B:

"*Allotment*" means the discrete quantity of royalty oil to be sold to a purchaser. The quantity of oil in an allotment shall be determined by DOI and shall be contained in the "Notice of Availability of Royalty Oil."

"*Fair market value*" means the value of oil determined by DOI (1) computed at a unit price equivalent to the average unit price at which such oil was sold pursuant to a lease during the period for which any royalty or net profit share is accrued or reserved to the United States pursuant to such lease, or (2) if there were no such sales, or if DOI finds that there were insufficient number of such sales to equitably determine such value, computed at the average unit price at which oil was sold pursuant to other leases in the same region of the OCS during such period, or (3) if there were no sales of oil from such region during such period, or if DOI finds that there are an insufficient number of such sales to equitably determine such value, at an appropriate price determined by DOI.

"*Lessee*" means the holder of a Federal OCS oil and gas lease issued under the OCSLA who is authorized to develop and produce oil and gas, including all parties holding such authority by or through the lessee.

"*OCS royalty oil*" means, for a section 8 lease, that amount of oil that DOI has determined to take in kind in satisfaction of the section 8 lessee's royalty obligation. "OCS royalty oil" means, for a section 6 lease, that amount of oil that the lessee elects and that DOI accepts as payment in satisfaction of the lessee's royalty obligation.

"*Point of delivery*" means the place at which OCS royalty oil, or the quantity thereof in a commingled stream, is delivered by the lessee to the United States and ownership of the OCS royalty oil is transferred simultaneously by the United States to the small refiner/purchaser. With respect to: (1) All leases issued after October 1969, the point of delivery shall be a place designated by or acceptable to the designated official. The deliveries normally shall be made immediately downstream from the place of measurement of such oil or of the commingled stream containing such oil, after separation and treating processes: *Provided, however,* That if such measurement is at an offshore location and such oil is commingled after such measurement with other untreated oil and is transported to a treating facility for treating and final measurement, the point of delivery may be immediately downstream of the place of final measurement: *and Provided further,* That the point of delivery may be at any other place which the designated official determines is practical for both the lessee and the purchaser, and which ensures proper safeguards for the environment; and (2) section 8 leases issued prior to October 1969, the point of delivery shall be a place designated by the lessee.

"*Purchaser*" means any member of the public who complies with § 209.140(b).

"*Regulated price*" means the highest price (a) at which oil may be sold pursuant to the Emergency Petroleum Allocation Act of 1973 (Pub. L. 93-159, 87 Stat. 628 (15 U.S.C. 751, *et seq.*)) and any rule or order issued under such Act, or (b) at which Federal oil may be sold under any provision of law or rule or order thereunder which sets a price (or manner for determining a price) for oil.

"*Section 6 lease*" means an oil and gas lease originally issued by any State and currently maintained in effect pursuant to section 6 of the OCSLA.

"*Section 8 lease*" means an oil and gas lease issued by the United States pursuant to section 8 of the OCSLA.

"*Small refiner*" means an owner of an existing refinery or refineries who can demonstrate its qualification as a small business concern under the rules of the Small Business Administration, both at the time of application and at the time of award of the contract to purchase such oil. The combined refinery capacity of a small refiner shall be employed in determining if a small refiner has demonstrated its qualification under the preceding sentence.

### § 209.110 OCS royalty oil allocation.

(a) *Determination by the Secretary of the Interior.* The Secretary of the Interior shall make a determination whether small refiners have access to adequate supplies of oil at equitable prices. The determination by the Secretary of the Interior shall be made prior to any offer to sell OCS royalty oil and shall be published in the FEDERAL REGISTER concurrent with or included in the publication of the Notice of Availability of Royalty Oil.

(b) *Allocation to small refiners.* (1) Upon a determination by the Secretary of the Interior under paragraph (a) of this section that small refiners do not have access to adequate supplies of oil at equitable prices, DOI may offer OCS royalty oil for sale to small refiners. Such oil may be sold only to small refiners upon application filed in accordance with § 209.140(a). Such oil may only be purchased for processing or use in a small refiner's refinery or refineries and may not be resold in kind.

(2) All sales of royalty oil to small refiners shall be made at not more than the regulated price or, if no regulated price applies, at the fair market value of the oil. A charge for the cost of administration of an amount equal to one-half percent of the sale price shall be levied for each barrel of OCS royalty oil sold to small refiners.

(3) When available OCS royalty oil is insufficient to satisfy the requirements of all small refiners who have made application, the oil shall be allo-

cated among such small refiners by a drawing or on an equitable prorated basis, as determined by the designated official.

(4) No small refiner shall be awarded contracts for volumes of OCS royalty oil that, when added to volumes of other Federal royalty oil purchased by the small refiner under 30 CFR Part 208, are in excess of 60 percent of the combined refinery capacity of that small refiner.

(5) Allocations of OCS royalty oil shall be based upon the refinery capacity as certified by ERA at the time of application; provided that, in the case of new of expanded refinery capacity for which no ERA certification exists that is scheduled to come into operation between the date of application and three months prior to the anticipated effective date of the award of contracts as indicated in the Notice of Availability of Royalty Oil, the designated official may base an allocation upon financial and engineering data certified by the small refiner on anticipated capacity and date of operation. Such data must be sufficient to allow the designated official to determine the capacity of the new or expanded refinery. No contract shall be awarded unless, three months prior to the date of contract award, the small refiner provides to the designated official ERA certification confirming such determination of capacity. However, in the case of the sales of royalty oil anticipated to be effective on July 1, 1980, allocations of OCS royalty oil may be based upon such ERA determination of refinery capacity as DOI, by notice in the FEDERAL REGISTER, may decide to accept.

(c) *Allotments to purchasers.* (1) DOI may sell OCS royalty oil to purchasers only in accordance with any provision of law, or regulations issued in accordance with such provisions, that provide for DOE to allocate, transfer, exchange, or sell oil in amounts or at prices determined by such provision of law or regulations.

(2) Upon a determination by the Secretary of the Interior under paragraph (a) of this section that small refiners do have access to adequate supplies of crude oil at equitable prices, DOI may offer OCS royalty oil for sale to purchasers. Such oil shall be sold only in equal allotments, by competitive bidding, to purchasers in accordance with the regulations contained in this subpart and may not be resold in kind.

(3) All bids submitted by purchasers of OCS royalty oil must be filed in accordance with § 209.140(b). All sales of royalty oil shall be made at the regulated price or, if no regulated price applies, at not less than the fair market value of the oil.

(4) Allotments of OCS royalty oil shall be awarded to purchasers who are the highest bidders.

(5) No purchaser shall receive more than one allotment of the oil offered at each individual OCS royalty oil sale.

(6) When two or more purchasers bid the same price for the offered OCS royalty oil and their bids, by virtue of their amount, make them eligible for allotments, a drawing shall be held to determine which purchasers shall receive allotments if there are more purchasers than allotments.

(7) If a purchaser is selected for receipt of an allotment and if the purchaser's oil supply requirements, as stated in the application filed in accordance with § 209.140(b)(3), exceed the allotment of oil, the purchaser shall receive only an amount of oil equal to the allotment of oil.

(8) If a purchaser is selected for receipt of an allotment and if the purchaser's oil supply requirements, as stated in his application filed in accordance with § 209.140(b)(3), are less than the allotment of oil, the purchaser shall receive only that amount of oil requested in the application.

(9) If, after all allotments have been sold, an amount of oil remains that is determined by DOI to be large enough for sale, the excess oil shall be made available for sale as another allotment or allotments at that time. Such allotments may be used to increase the allotments previously made.

(10) A charge for the cost of administration of an amount equal to one-half percent of the sales price as provided for in paragraph 3 of this section shall be levied for each barrel of royalty oil sold to purchasers.

(d) *Allocation or allotments from section 6 leases and certain section 8* *leases.* OCS royalty oil produced under a section 6 lease may be made available for sale only when the lessee elects and DOI accepts the royalty oil as payment in satisfaction of the lessee's royalty obligation. OCS royalty oil produced from either section 6 or section 8 leases that are in dispute between the United States and a State as to ownership may be made available for sale only with the concurrence of that State, and evidence of such concurrence shall be furnished by the small refiner/purchaser applicant at such time as may be specified by the designated official.

[45 FR 9532, Feb. 12, 1980. Redesignated and amended at 48 FR 1182, Jan. 11, 1983. Redesignated at 48 FR 35642, Aug. 5, 1983]

### § 209.120 Reimbursement to lessee for transportation.

(a) When the point of delivery for OCS royalty oil produced under a section 8 lease is to be other than on or immediately adjacent to the leased area from which the oil is produced, the small refiner/purchaser shall promptly reimburse the lessee for the cost of transporting the oil to the point of delivery. Such reimbursement shall be monthly or at such other interval as may be determined by the designated official.

(b) The cost of transportation shall be approved by the designated official and may be deducted from the value of the oil at the point of delivery in calculating payments to be made to the United States. The United States guarantees payments to the lessee for such cost of transportation.

### § 209.130 Exchange agreement.

(a) Notwithstanding that OCS royalty oil purchased by a small refiner/purchaser cannot be resold, a small refiner/purchaser may enter into an agreement providing for the exchange of OCS royalty oil purchased for other oil on an equivalent volume of value basis. When a small refiner/purchaser anticipates entering into an exchange agreement for any of the OCS royalty oil that it may purchase, complete information regarding such agreement shall be included with the application to purchase OCS royalty oil, unless a later date for submission of such information is specified by the designated official.

(b) Exchange of OCS royalty oil shall not be authorized unless the agreement has been approved by DOI and shall become effective only upon such approval.

### § 209.140 Application; contents.

(a) *Small refiner applications.* To apply for the purchase of OCS royalty oil offered for sale to small refiners, an applicant must file an application during the application period (as specified in the Notice of Availability of Royalty Oil) with the designated official of the Area or region in which the oil is produced. Such application shall be filed in triplicate and shall include:

(1) Name and address of the applicant and location of its refinery or refineries, disclosure of the applicant's affiliation or association with any other refiner of oil or any other business entity if such relationship exists, and a statement of the reasons which are the bases of the applicant's belief that it qualifies as a small business concern under the rules of the Small Business Administration. The application should also include a self certification by the chief executive officier of the small refiner, or his/her designee, that the refiner is a small business concern in accordance with the rules and regulations of the Small Business Administration;

(2) Certified capacity of the applicant's refinery or refineries in crude throughput of barrels of oil per calendar day, as determined by the Economic Regulatory Administration of DOE, the amount, source and grade of all oil currently available to the applicant from the applicant's own production or by purchase, including any outstanding OCS or onshore royalty oil contracts at the time of application, and in the case of idle facilities or those under construction, the onstream date;

(3) In the case of new or expanded refinery capacity for which no ERA certification exists that is scheduled to come into operation between the date of application and three months prior to the anticipated effective date of the award of contracts as indicated in the

Notice of Availability of Royalty Oil, financial and engineering data certified by the small refiner on anticipated capacity and date of operation; such data must be sufficient to allow the designated official to determine refinery capacity;

(4) Minimum amount and grade of additional oil required to meet the applicant's refining capacity and the field or field that the applicant believes offer a potential source of OCS royalty oil supply;

(5) Tabulation for the last 12 months of refinery operation of the amount and grade of oil refined by the applicant each month and the kind and amount of the principal finished products.

(b) *Purchaser applications.* To receive OCS royalty oil that is for sale to the public, a purchaser applicant shall file an application during the application period (as indicated in the Notice of Availability of Royalty Oil) with the designated official of the Area or Region in which the oil is produced. Such application shall be filed in triplicate and shall include:

(1) Name and address of the applicant;

(2) Amount of the applicant's bid per barrel per grade of oil (such bid shall not exceed the ceiling price of oil as prescribed by DOE in 10 CFR Part 212); and

(3) Number of barrels and the grade of oil that the applicant desires to purchase.

### § 209.141 Action by the designated official.

(a) The designated official shall examine each application filed and, as appropriate, shall request additional information if the information included in the submitted application is inadequate or unsatisfactory. If an application is received after the close of the application period (as indicated in the Notice of Availability of Royalty Oil), the application shall be automatically rejected. If additional information is requested by the designated official, it must be received in the office of the designated official by the time specified by the designated official or the application shall be automatically rejected.

(b) After the close of the application period and the receipt of any additional requested information, the designated official shall furnish a report to the Director who will make appropriate recommendations to the Secretary of the Interior.

### § 209.142 Action by DOI.

After determinations are made to take OCS royalty oil in kind, the Secretary of the Interior shall make the determination specified in § 209.110(a). Upon publication of such determination in the FEDERAL REGISTER, such OCS royalty oil shall be offered for sale. DOI, by publication of a Notice of Availability of Royalty Oil in the FEDERAL REGISTER, shall specify the manner in which the sale is to be effected, the approximate quantity of royalty oil to be offered, the closing date for the receipt of applications for royalty oil, other general administrative details concerning the application, and the allocation and contract award process for the royalty oil. The Notice of Availability of Royalty Oil shall describe generally the terms upon which the royalty oil contract will be awarded. In addition, the Secretary of the Interior may authorize the Director or other designated official of the MMS to execute on behalf of the United States any contract for the sale of OCS royalty oil, to approve any exchange agreement, and to determine the amount and type of bond or other security to be required from a small refiner/purchaser in accordance with any contract.

[45 FR 9532, Feb. 12, 1980. Redesignated and amended at 48 FR 1182, Jan. 11, 1983. Redesignated at 48 FR 35642, Aug. 5, 1983]

### § 209.150 Notices.

(a) The designated official shall notify the section 8 lessees who shall be required to provide OCS royalty oil to a small refiner/purchaser under a new contract at least 30 days prior to the date on which the first delivery of such oil is to commence.

(b) When delivery of OCS royalty oil is to be suspended or terminated, the designated official shall, if practicable, notify the lessees who are providing such oil at least 30 days prior to the date on which delivery is to be suspended or terminated.

## PART 210—FORMS AND REPORTS

**Subpart A—General Provisions**

Sec.
210.10 Information collection.

**Subpart B—Oil and Gas, General**

210.50 Required recordkeeping.
210.51 Payor information form.
210.52 Report of sales and royalty remittance.
210.53 Definitions.

**Subart C—Oil and Gas, Onshore**

210.100 Division orders, run tickets, sales agreement or contracts.
210.101 Sales contracts; division orders.
210.102 Daily report of gas-producing wells (Form 9-352).
210.103 Statement of oil and gas runs and royalties (Form 9-361 Public; Form 9-361A Indian).
210.104 Royalty and rental remittance (Form 9-614A Indian).
210.105 Special forms or reports.

**Subpart D—Oil, Gas and Sulphur, Offshore**

210.150 Sales contracts.
210.151 Statement of oil and gas runs and royalties.

**Subpart E—Solid Minerals, General**

210.200 Required recordkeeping.
210.201 Solid minerals payor information form.
210.202 Report of sales and royalty remittance-solid minerals.
210.203 Special forms and reports.

**Subpart F—Geothermal**

210.300 Monthly report of sales and royalty.
210.301 Sales contracts.

**Subpart G—Indian Lands—[Reserved]**

AUTHORITY: The Act of February 25, 1920 (30 U.S.C. 181 *et seq.*), as amended; the Act of May 21, 1930 (30 U.S.C. 301-306); the Mineral Leasing Act for Acquired Lands (30 U.S.C. 351-359), as amended; the Act of March 3, 1909 (25 U.S.C. 396);as amended; the Act of May 11, 1938 (25 U.S.C. 396a-396q) as amended; the Act of February 28, 1891 (25 U.S.C. 397), as amended; the Act of May 29, 1924 (25 U.S.C. 398); the Act of March 3, 1927 (25 U.S.C. 398a-398e); the Act of June 30, 1919 (25 U.S.C. 399) as amended; R.S. sec. 411 (43 U.S.C. 1457), see also Attorney General's Opinion of April 2, 1941 (40 Op. Atty. Gen. 41); the Federal Property and Administrative Services Act of 1949 (40 U.S.C. 471 *et seq.*), as amended; The National Environmental Policy Act of 1969 (42 U.S.C. 4321 *et seq.*) as amended; the Act of December 12, 1980 (Pub. L. 96-514, 94 Stat. 2964); the Combined Hydrocarbon Leasing Act of 1981 (Pub. L. 97-78, 95 Stat. 1070); the Outer Continental Shelf Lands Act (43 U.S.C. 1331 *et seq.*), as amended; section 2 of Reorganization Plan No. 3 of 1950 (64 Stat. 1262); Secretarial Order No. 3071 of January 19, 1982, as amended; Secretarial Order 3087, as amended; the Indian Mineral Development Act of 1982 (25 U.S.C. 2101 *et seq.*); the Federal Oil and Gas Royalty Management Act of 1982 (30 U.S.C. 1701 *et seq.*).

### Subpart A—General Provisions

**§ 210.10 Information collection.**

The information collection requirements contained in Part 210 have been approved by the Office of Management and Budget (OMB) under 44 U.S.C. 3504(h). The forms and approved OMB clearance numbers are as follows:

| Form No., Name, and Filing Date | OMB No. |
|---|---|
| MMS—4025—Oil and gas payor information form-due 30 days after issuance of a new lease or a change to an existing lease | 1010-0033 |
| MMS-2014—Report of sales and royalty remittance-oil and gas-due by the end of first month following production month for royalty payment and for rentals no later than anniversary date of the lease | 1010-0022 |
| MMS-4030—Solid minerals payor information form-due 30 days after issuance of a new lease or change to an existing account established by an earlier form | 1010-0064 |
| MMS-4014—Report of sales and royalty remittance-solid minerals-due by end of month following sales or production month (unless lease terms specify a different frequency for royalty payments) and for rentals no later than the date specified in the lease terms | 1010-0064 |

The information is being collected by the Department of the Interior to meet its congressionally mandated accounting and audit responsibilities relating to Federal and Indian mineral royalty management. The information will be used to determine the type and quantity of mineral production on Federal and Indian lands, the amount of royalties due, the person(s) responsible for payment, and the amounts paid. The reports are mandatory.

[48 FR 43323, Sept. 23, 1983, as amended at 49 FR 37345, Sept. 21, 1984; 51 FR 15766, Apr. 28, 1986]

## Subpart B—Oil and Gas, General

AUTHORITY: The Federal Oil and Gas Royalty Management Act of 1982 (30 U.S.C. 1701 *et seq.*).

SOURCE: 49 FR 37345, Sept. 21, 1984, unless otherwise noted.

### § 210.50 Required recordkeeping.

Information required by the MMS shall be filed using the forms prescribed in this Subpart, which are available from MMS. Records may be maintained in microfilm, microfiche, or other recorded media that is easily reproducible and readable.

### § 210.51 Payor information form.

The Payor Information Form (Form MMS-4025) must be filed for each Federal or Indian lease on which royalties are paid. Where specifically determined by MMS, Form MMS-4025 is also required for all Federal leases on which rent is due. The completed form must be filed by the party who is making the rent or royalty payment (payor) for each revenue source. Form MMS-4025 must be filed no later than 30 days after issuance of a new lease or a modification to an existing lease which changes the paying responsibility on the lease.

### § 210.52 Report of sales and royalty remittance.

A completed Report of Sales and Royalty Remittance (Form MMS-2014) must accompany all payments to MMS for royalties and, where specified, for rents on nonproducing leases. Payors who submit Form MMS-2014 data on magnetic tape will not be required to submit the form itself. Completed Form MMS-2014's (or magnetic tape) for royalty payments including those covering payments by electronic funds transfer, are due by the end of the month following the production month. Where applicable, completed Form MMS-2014's for rental payments are due no later than the anniversary date of the lease. This section does not prohibit payors from making early payments voluntarily.

### § 210.53 Definitions.

Terms used in this subpart shall have the same meaning as in 30 U.S.C. 1702.

## Subpart C—Oil and Gas, Onshore

SOURCE: 47 FR 47773-47776, Oct. 27, 1982, unless otherwise noted. Redesignated at 48 FR 35641, Aug. 5, 1983.

### § 210.100 Division orders, run tickets, sales agreement or contracts.

The Associate Director is authorized to approve, subject to such conditions as he shall prescribe, division orders or temporary purchase agreements granting to transportation agencies or purchasers authority to receive products from leased lands in accordance with Government rules and regulations; sign run tickets or other receipts for royalty oil or gas delivered to a representative of the lessor or to the lessor's account; and approve sales agreements and contracts, subject to any conditions, modification, or revocation that may be prescribed on review thereof by the Director.

CROSS REFERENCE: For regulations relating to approval of sales agreements or contracts, see Part 207 of this chapter.

### § 210.101 Sales contracts; division orders.

The lessee shall file with the Associate Director triplicate (quadruplicate for production of restricted Indian lands or naval petroleum reserves) executed copies of all contracts for the disposition of all products of the leased land except that portion used for purposes of production on the leased land or unavoidably lost, and he shall not sell or otherwise dispose of said products except in accordance with a sales contract, division order, or other arrangement first approved, as provided in § 210.100.

### § 210.102 Daily report of gas-producing wells (Form 9-352).

Unless otherwise directed by the Associate Director, the readings of all meters showing production of natural gas from leased lands shall be submitted daily on Form 9-352, together with the meter charts. After a check has been had, the meter charts will be returned.

**§ 210.103 Statement of oil and gas runs and royalties (Form 9-361 Public; Form 9-361A Indian).**

When directed by the Associate Director, a monthly report shall be made by the lessee in duplicate, on Form 9-361 or Form 9-361A, showing each run of oil, all sales of gas, gasoline, other lease products, and the royalty accruing therefrom to the lessor. When use of this form is required, it must be completely filled out and sworn to.

**§ 210.104 Royalty and rental remittance (Form 9-614A Indian).**

Form 9-614A, completely filled out and signed, shall be submitted to the Associate Director in triplicate and shall accompany each remittance covering payments of royalty or rental on Indian lands.

**§ 210.105 Special forms or reports.**

When special forms or reports other than those referred to in the regulations in this part may be necessary, instructions for the filing of such forms or reports will be given by the Associate Director.

## Subpart D—Oil, Gas and Sulphur, Offshore

**§ 210.150 Sales contracts.**

The lessee shall file with the Director, within 30 days after their effective date, a copy of all contracts, including all contract modifications (e.g., amendments and terminations), for the disposal of lease products. Nothing in any such contract shall be construed or accepted as modifying any of the provisions of the lease.

[44 FR 61892, Oct. 26, 1979. Redesignated at 48 FR 35641, Aug. 5, 1983]

**§ 210.151 Statement of oil and gas runs and royalties.**

(a) When required by the Director, a monthly report shall be submitted on Form 9-153, showing: each run of oil; all transfers of gas and other lease products; and the royalty accruing therefrom to the lessor. Form 9-153 shall be submitted on or before the last day of the calendar month which follows the calendar month in which the production is obtained.

(b) This reporting requirement has been approved by the Office of Management and Budget in accordance with the Federal Reports Act of 1942 (42-R1237).

[44 FR 61892, Oct. 26, 1979. Redesignated at 48 FR 35641, Aug. 5, 1983]

## Subpart E—Solid Minerals, General

SOURCE: 51 FR 15766, Apr. 28, 1986, unless otherwise noted.

**§ 210.200 Required recordkeeping.**

Information required by the Minerals Management Service (MMS) shall be filed using the forms prescribed in this subpart, copies of which are available from MMS. Instructions on the completion of these forms are provided in the Payor Handbook—Solid Minerals, also available from MMS. Records and supporting data may be maintained in hardcopy, microfilm, microfiche, or other recorded media that is readily available and readable.

**§ 210.201 Solid minerals payor information form.**

A Solid Minerals Payor Information Form (Form MMS-4030) must be submitted to MMS for each Federal and Indian solid minerals lease on which royalties, rentals or minimum royalties are paid. This form does not change any requirement for a separate approval, if required, by the Department of the Interior. The Form MMS-4030 shall identify the payor of rent, minimum royalty, advance royalty and production royalty, and identify revenue sources and selling arrangements for all lease products. The completed form must be filed by each royalty payor no later than 30 days after MMS provides notice that the payor is converted to the Auditing and Financial System (AFS). After filing the initial form, a new Form MMS-4030 must be filed no later than 30 days after the occurrence of any of the following:

(a) Assignment of all or any part of the lease;

(b) Adoption of a new mining method;

(c) Production of a new product;

(d) A change in a selling arrangement;

(e) Change in royalty rate;

(f) Change of payor; or

(g) Abandonment of a lease.

**§ 210.202 Report of sales and royalty remittance-solid minerals.**

A completed Report of Sales and Royalty Reimttance—Solid Minerals (Form MMS-4014) must accompany all payments to MMS for rents (other than first year) and royalties for Federal and Indian solid minerals leases. On leases where payment is remitted directly to an Indian tribe or Bureau of Indian Affairs office, the payor also must send a completed form MMS-4014 to MMS for processing in AFS. The Form MMS-4014 shall identify the payor and the lease subaccounts, contain production, sales, and royalty data, and identify the time period applicable to the data. Completed forms are due at the end of the month following the production or sales period as applicable. Unless the lease terms specify a different royalty payment frequency, all reports and payments are due monthly. If the lease terms do specify a different frequency for payment, the reporting must coincide with the payment. The Form MMS-4014 for rental payments is due no later than the rental payment date specified in the lease terms.

**§ 210.203 Special forms and reports.**

The MMS may require submission of additional information on special forms or reports. When special forms or reports other than those referred to in this subpart are necessary, instructions for the filing of such forms or reports will be given by MMS. Requests for the submission of such forms will be made in conformity with the requirements of the Paperwork Reduction Act of 1980 and other applicable laws.

## Subpart F—Geothermal

**§ 210.300 Monthly report of sales and royalty.**

A report of sales and royalty for each productive lease must be filed each month once sales of production are made even though sales may be intermittent, unless otherwise authorized by the Supervisor. Total volumes of geothermal resources produced and sold, the value of production, and the royalty due the lessor must be shown. If byproducts are being recovered, the same requirement shall be applicable. This report is due on or before the last day of the month following the month in which production was obtained and sold or utilized, together with the royalties due the United States. Payment or royalty is to be made pursuant to § 270.50 unless otherwise authorized by the Supervisor.

[38 FR 35068, Dec. 21, 1973. Redesignated at 48 FR 35641, Aug. 5, 1983 and further redesignated at 51 FR 15766, Apr. 28, 1986]

**§ 210.301 Sales contracts.**

The lessee shall file with the Supervisor within 30 days after the effective date of the sales contract a copy of any contract for the disposal of geothermal resources from the lease.

[38 FR 35068, Dec. 21, 1973. Redesignated at 48 FR 35641, Aug. 5, 1983, and further redesignated at 51 FR 15766, Apr. 28, 1986]

## Subpart G—Indian Lands—[Reserved]

# PART 212—RECORDS AND FILES MAINTENANCE

### Subpart A—General Provisions—[Reserved]

### Subpart B—Oil and Gas, General

Sec.

212.50 Required recordkeeping and reports.
212.51 Records and files maintenance.
212.52 Definitions.

Sec.

### Subpart C—Oil and Gas, Onshore—[Reserved]

### Subpart D—Oil, Gas and Sulfur, Offshore—[Reserved]

### Subpart E—Solid Minerals—General

212.200 Maintenance of and access to records.

### Subpart F—Geothermal—[Reserved]

### Subpart G—Indian Lands—[Reserved]

AUTHORITY: The Mineral Leasing Act of February 25, 1920, as amended (30 U.S.C.181 *et seq.*); the Mineral Leasing Act for Acquired Lands, as amended (30 U.S.C. 351-359); the Surface Mining Control and Reclamation Act of 1977 (30 U.S.C. 1201 *et seq.*) the National Historic Preservation Act of 1966 as amended (16 U.S.C. 1201 *et seq.*) the Endangered Species Act of 1973, as amended (16 U.S.C. 1531 *et seq.*) the Act of March 3, 1909 as amended (25 U.S.C. 396); the Act of May 11, 1938, as amended (25 U.S.C. 396a-396q); The Act of February 28, 1891, as amended (25 U.S.C. 397); The Act of May 29, 1924 (25 U.S.C. 398); The Act of March 3, 1927, (25 U.S.C. 398a-398e); The Act of June 30, 1919, as amended (25 U.S.C. 399); RS. sec. 441 (43 U.S.C. 1457); The Federal Property and Administrative Services Act of 1949, as amended (40 U.S.C. 471 *et seq.*) the National Environmental Policy Act of 1969, as amended; (42 U.S.C. 4321 *et seq.*); the Freedom of Information Act (5 U.S.C. 552); the Indian Mineral Development Act of 1982 (25 U.S.C. 2101 *et seq.*); the Federal Oil and Gas Royalty Management act of 1982 (30 U.S.C. 1701 *et seq.*).

## Subpart A—General Provisions—[Reserved]

## Subpart B—Oil and Gas, General

AUTHORITY: The Federal Oil and Gas Royalty Management Act of 1982 (30 U.S.C. 1701 *et seq.*).

SOURCE: 49 FR 37345, Sept. 21, 1984, unless otherwise noted.

### § 212.50 Required recordkeeping and reports.

All records pertaining to offshore and onshore Federal and Indian oil and gas leases shall be maintained by a lessee, operator, revenue payor, or other person for 6 years after the records are generated unless the recordholder is notified, in writing, that records must be maintained for a longer period. When an audit or investigation is underway, records shall be maintained until the recordholder is released by written notice of the obligation to maintain records.

### § 212.51 Records and files maintenance.

(a) *Records.* Each lessee, operator, revenue payor, or other person shall make and retain accurate and complete records necessary to demonstrate that payments of rentals, royalties, net profit shares, and other payments related to offshore and onshore Federal and Indian oil and gas leases are in compliance with lease terms, regulations, and orders. Records covered by this section include those specified by lease terms, notices and orders, and by the various parts of this Chapter. Records also include computer programs, automated files, and supporting systems documentation used to produce automated reports or magnetic tape submitted to the Minerals Management Service (MMS) for use in its Auditing and Financial System (AFS) and Production Accounting and Auditing System (PAAS).

(b) *Period for keeping records.* Lessees, operators, revenue payors, or other persons required to keep records under this Section shall maintain and preserve them for 6 years from the day on which the relevant transaction recorded occurred unless the Secretary notifies the record holder of an audit or investigation involving the records and that they must be maintained for a longer period. When an audit or investigation is underway, records shall be maintained until the recordholder is released in writing from the obligation to maintain the records. Lessees, operators, revenue payors, or other persons shall maintain the records generated during the period for which they have paying or operating responsibility on the lease for a period of 6 years.

(c) *Inspection of records.* The lessee, operator, revenue payor, or other person required to keep records shall be responsible for making the records available for inspection. Records shall be provided at a business location of the lessee, operator, revenue payor, or other person during normal business hours upon the request of any officer, employee or other party authorized by the Secretary. Lessees, operators, revenue payors, and other persons will be given a reasonable period of time to produce historical records.

[49 FR 37345, Sept. 21, 1984; 49 FR 40576, Oct. 17, 1984]

**§ 212.52 Definitions.**

Terms used in this subpart shall have the same meaning as in 30 U.S.C. 1702.

## Subpart C—Oil and Gas, Onshore—[Reserved]

## Subpart D—Oil, Gas and Sulfur, Offshore—[Reserved]

## Subpart E—Solid Minerals—General

**§ 212.200 Maintenance of and access to records.**

(a) All records pertaining to Federal and Indian solid minerals leases shall be maintained by a lessee, operator, revenue payor, or other person for 6 years after the records are generated unless the record holder is notified, in writing, that records must be maintained for a longer period. When an audit or investigation is underway, records shall be maintained until the record holder is released by written notice of the obligation to maintain records.

(b) The District Mining Supervisor and the Associate Director for Royalty Management shall have access to all records of the operator/lessee pertaining to compliance to Federal royalties, including, but not limited to:

(1) Qualities and quantities of all products mined, processed, sold, delivered, or used by the operator/lessee.

(2) Prices received for mined or processed products, prices paid for like or similar products, and internal transfer prices.

(3) Costs of mining, processing, handling, and transportation.

[47 FR 33193, July 30, 1982. Redesignated at 48 FR 35641, Aug. 5, 1983, and amended at 51 FR 15767, Apr. 28, 1986]

## Subpart F—Geothermal—[Reserved]

## Subpart G—Indian Lands—[Reserved]

# PART 215—ACCOUNTING AND AUDITING STANDARDS—[RESERVED]

# PART 216—PRODUCTION ACCOUNTING

### Subpart A—General Provisions

Sec.
216.1 Purpose.
216.2 Scope.
216.6 Definitions.
216.10 Information collection.
216.20 Applicability.
216.21 General obligations of the reporter.
216.25 Confidentiality.
216.30 Special forms and reports.
216.40 Assessments for incorrect or late reports and failure to report.

### Subpart B—Oil and Gas, General

216.50 [Reserved]
216.51 Facility and Measurement Information Form and Supplement.
216.52 Well Information Form.
216.53 First Purchaser Report.
216.54 Oil and Gas Operations Report.
216.55 Gas Analysis Report.
216.56 Gas Plant Operations Report.
216.57 Fractionation Plant Operations Report.
216.58 Production Allocation Schedule Report.
216.61 API Well Number Change Report.

### Subpart C—Oil and Gas, Onshore [Reserved]

### Subpart D—Oil, Gas, and Sulphur, Offshore [Reserved]

### Subpart E—Solid Minerals, General

216.200 [Reserved]
216.201 Mine Information Report.
216.202 Facility and Measurement Information Form.
216.203 Solid Minerals Operations Report.
216.204 Solid Minerals Facility Report.

Sec.

**Subpart F—Coal [Reserved]**

**Subpart G—Other Solid Minerals [Reserved]**

**Subpart H—Geothermal Resources [Reserved]**

**Subpart I—Indian Land [Reserved]**

AUTHORITY: The Act of February 25, 1920 (30 U.S.C. 181 *et seq.*) as amended; the Act of May 21, 1930 (30 U.S.C. 301-306); the Minerals Leasing Act for Acquired Lands (30 U.S.C. 351-359), as amended; the Act of March 3, 1909 (25 U.S.C. 396), as amended; the National Environmental Policy Act of 1969 (42 U.S.C. 4321, *et seq.*) as amended; the Act of May 11, 1938 (25 U.S.C. 396a-396q), as amended; the Act of February 28, 1891 (25 U.S.C. 397), as amended; the Act of May 29, 1924 (25 U.S.C. 398); the Act of March 3, 1927 (25 U.S.C. 398a-398e); the Act of June 30, 1919 (25 U.S.C. 399), as amended; R.S. sec. 441 (43 U.S.C. 1457), see also Attorney Generals's Opinion of April 2, 1941 (40 Op. Atty. Gen. 41); the Federal Property and Administrative Services Act of 1949 (40 U.S.C. 471, *et seq.*), as amended; the Act of December 12, 1980 (Pub. L. 96-514, 94 Stat. 2964); the Combined Hydrocarbon Leasing Act of 1981 (Pub. L. 97-78, 95 Stat. 1070); the Outer Continental Shelf Lands Act (43 U.S.C. 1331, *et seq.*), as amended; Section 2 of Reorganization Plan No. 3 of 1950 (64 Stat. 1262); Secretarial Order No. 3071 of January 19, 1982, as amended; Secretarial Order 3087, as amended; The Indian Mineral Development Act of 1982 (25 U.S.C. 2101, *et seq.*); and the Federal Oil and Gas Royalty Management Act of 1982 (30 U.S.C. 1701, *et seq.*).

SOURCE: 51 FR 8175, Mar. 7, 1986, unless otherwise noted.

## Subpart A—General Provisions

### § 216.1 Purpose.

The purpose of this part is to ensure that the Federal Government receives proper information regarding energy and mineral resources removed from Federal and Indian leases and federally approved agreements, including the Outer Continental Shelf (OCS).

### § 216.2 Scope.

This part governs the reporting of oil, gas, and solid minerals operations information on Federal and Indian leases or federally approved agreements including the OCS. This part also governs the reporting of other operational information associated with production from Federal and Indian leases or federally approved agreements when such operations occur prior to the point of sale or royalty determination, whichever is applicable. Reporters are required to continue to submit existing production reports (3160-6 (formerly 9-329 and 9-329-1), 9-152, 9-373A, 9-128, 9-128a, 9-128b, 9-128c, 9-128d, 9-368, 9-1146, etc.) until conversion to PAAS. The appropriate MMS official will notify reporters being converted to PAAS of the proper schedules for start-up of reporting under PAAS and for discontinuing reporting using the existing production report forms.

### § 216.6 Definitions.

For purposes of this part:

(a) *"Agreement"* means a binding arrangement between two or more parties purporting to the act of agreeing or of coming to a mutual arrangement that is accepted by all parties to a transaction (e.g., communitizations, unitization, gas storage, or compensatory royalty agreements.).

(b) *"Alaska Native Corporation"* means a corporation created pursuant to the provisions of the Alaska Native Claims Settlement Act (43 U.S.C. 1601 *et seq.*).

(c) *"Approved mining plan"* as used in this part means an approved resource recovery and protection plan (43 CFR 3480.5) or approved mining plan (43 CFR 3572.1).

(d) *"Associate Director"* means the Associate Director for Royalty Management of the MMS.

(e) *"Conversion period"* means that period of time between the date an operator not subject to the rules of this part is notified that the rules are to be made applicable to that operator, and the effective date of applicability. The conversion period will not be less than one year unless the operator requests a shorter period.

(f) *"Facility"* means a structure(s) used to store or process Federal or Indian mineral production prior to or at the point of royalty determination.

(g) *"Federal lease"* means a lease concerning minerals owned by the United States and includes a lease where an Alaska Native Corporation receives all or part of the royalties accruing from that lease, and the MMS has not waived administration of that lease.

(h) "*First purchaser*" means any entity receiving the lease production in a first transfer for value transaction.

(i) "*Gas*" means any fluid, either combustible or noncombustible, which is extracted from a reservoir and which has neither independent shape nor volume, but tends to expand indefinitely; a substance that exists in a gaseous or rarefied state under standard temperature and pressure conditions.

(j) "*Indian lease*" means a lease concerning lands or interest in lands of an Indian Tribe or an Indian allottee, his heirs or devisees, held in trust by the United States or which is subject to Federal restriction against alienation, including mineral resources and mineral estates reserved to an Indian Tribe or an Indian allottee, his heirs or devisees thereto in the conveyance of a surface or non-mineral estate, except that such term does not include any lands subject to the provisions of section 3 of the Act of June 28, 1906 (34 Stat. 539).

(k) "*Lease*" means any contract, profit-share arrangement, joint venture, permit, or other agreement issued or approved by the United States under a mineral leasing law that authorizes exploration for, extraction of, or removal of oil, gas, or solid minerals—or the land area covered by that authorization, whichever is covered by the context.

(l) "*Lessee*" means any person to whom the United States, an Indian Tribe, or an Indian allottee, issues a lease, or any person who has been assigned an obligation to make royalty or other payments required by the lease.

(m) "*MMS/RMP*" means the Royalty Management Program of the Minerals Management Service.

(n) "*Measurement device*" means a mechanical or electrical device that is used to measure production of oil, gas, or solid minerals for sales, transfers, and/or royalty determination.

(o) "*Mine*" means an underground or surface excavation or series of excavations and the surface or underground support facilities that contribute directly or indirectly to mining, production, preparation, and handling of coal or other solid minerals.

(p) "*Mineral Leasing Law*" means any Federal law administered by the Secretary authorizing the disposition under lease of oil, gas, or solid minerals.

(q) "*Oil*" means any fluid hydrocarbon substance other than gas which is extracted in a fluid state from a reservoir and which exists in a fluid state under the existing temperature and pressure conditions of the reservoir. Oil includes liquefiable hydrocarbon substances such as drip gasoline or other natural condensates recovered in a liquid state from gas.

(r) "*Operator*" means any person, including a lessee who has control of or who manages operations on, any oil and gas or solid minerals lease site on Federal (including the OCS) or Indian lands. "Operator" also means any entity engaged in the business of developing, drilling for, producing, transporting, purchasing, selling, or processing oil, gas or solid minerals and/or which has the responsibility of reporting production from a lease or a portion thereof.

(s) "*Outer Continental Shelf (OCS)*" has the same meaning as provided in section 2 of the Outer Continental Shelf Lands Act, 43 U.S.C. 1331.

(t) "*Person*" means any individual, firm, corporation, association, partnership, consortium or joint venture.

(u) "*Production Accounting and Auditing System (PAAS)*" means an integrated system of manual and automated processes for minerals production reporting, accounting, and auditing. Based upon production reports submitted by reporters, the PAAS will track oil, gas, and solid minerals produced from or allocated to Federal and Indian leases, including the OCS, from the source of production to the point of disposition with emphasis on the point of royalty determination, or point of sale, whichever is applicable.

(v) "*Raw make*" means natural gas liquids (NGL's) that are extracted from the wet gas stream at a gas plant (e.g., ethane through natural gasoline) which sometimes is transferred to a fractionation plant for further processing.

(w) "*Reporter*" means any reporting entity required to submit a PAAS report or form to the MMS.

(x) "*Secretary*" means the Secretary of the Interior or his/her designee.

(y) "*Solid minerals*" means those minerals including but not limited to coal, potash, sodium, phosphate, sulfur, lead, zinc, copper, silica sands, sand and gravel, and other minerals under mineral leasing laws originating from or allocated to Federal or Indian leases, excluding oil or gas, oil shale, and geothermal resources.

### § 216.10 Information collection.

(a) The information collection requirements contained in Subpart B require the filing of forms which have been approved by the Office of Management and Budget (OMB) under 44 U.S.C. 3507, and assigned clearance number 1010-0040. The information is being collected for Federal and Indian royalty accounting purposes. The information collection requirements contained in Subpart E also require the filing of forms which have been approved under 44 U.S.C. 3507 and assigned clearance number 1010-0063.

(b) The information collected will be used to permit accounting and auditing of production information submitted by the reporter for mineral production from Federal and Indian leases and federally approved agreements. Information reporting forms are available from the MMS. Requests shall be addressed to: Minerals Management Service, Royalty Management Program, Box 17110, Denver, Colorado 80217.

### § 216.20 Applicability.

(a) The requirements of this part shall apply to all operators already reporting to the PAAS on April 7, 1986.

(b) The requirements of this part shall not apply to any operator not included in subsection (a) until MMS notifies the operator in writing, certified mail, return receipt requested, at least one year in advance of the date the rules are to be applicable to that operator, except such operators shall be required during the conversion period to file the reports required by § 216.51, § 216.52a, § 216.201, or § 216.202 as applicable.

(c) Notwithstanding subsection (b), any operator may request and MMS may approve a conversion period of less than one year.

(d) Notwithstanding any of the provisions of this section, operators on all offshore leases and all solid mineral leases issued on or after April 7, 1986, shall be subject to the requirements of this part without any conversion period.

### § 216.21 General obligations of the reporter.

The reporter shall submit accurately, completely and timely, pursuant to the requirements of this part, all information forms and other information required by MMS. Specific guidance on the use of the required forms is contained in the Production Accounting and Auditing System Reporters Handbook. Copies of the handbook are available from the MMS.

### § 216.25 Confidentiality.

(a) Information obtained by MMS pursuant to the rules of this part shall be open for public inspection and copying during regular office hours upon a written request, pursuant to rules at 43 CFR Part 2, except that:

(1) Notwithstanding any other provision of this part, information obtained from a reporter under this part relating to a minerals agreement approved pursuant to the Indian Mineral Development Act of 1982, 25 U.S.C. 2101 *et seq.*, the Tribal Leasing Act of 1938 (25 U.S.C. 396a *et seq.*), or the Allotted Indian Mineral Development Act of 1909 (25 U.S.C. 396), shall not be released without the written consent of the Indian Tribe(s) or individual Indian(s) who are parties to the mineral agreement.

(2) Information obtained from a reporter pursuant to this part that constitutes a trade secret and/or commercial or financial information which is privileged or confidential, or other information that may be withheld under the Freedom of Information Act (5 U.S.C. 552(b)), such as geologic and geophysical data concerning wells, shall be available for public inspection

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in accordance with 43 CFR Part 2. When such information is related to Indian lands, consent to release the information must also be obtained from the cognizant Tribe or allottee.

(b) If any geologic and/or geophysical data is submitted under this part, these shall be made available to the public only in accordance with the provisions of 30 CFR 250.3, 250.4 and 252.7, if these relate to an offshore lease, and in accordance with 43 CFR 3162.8 if these relate to an onshore Federal or Indian lease.

### § 216.30 Special forms and reports.

When special forms or reports other than those referred to in the regulations in this part are necessary, instructions for the filing of such forms or reports will be provided by the Associate Director. Such requests will be made in conformity with the requirements of the Paperwork Reduction Act of 1980, and are expected to involve less than 10 respondents annually.

### § 216.40 Assessments for incorrect or late reports and failure to report.

(a) An assessment of $10.00 per day may be charged for each report not received by MMS by the designated due date.

(b) An assessment of $10.00 per day may be charged for each report received by the designated due date but which is incorrectly completed.

(c) For purposes of oil and gas reporting under the PAAS, a report is defined as each line of production information required on the Oil and Gas Operations Report (Form MMS-4054), Gas Analysis Report (Form MMS-4055), Gas Plant Operations Report (Form MMS-4056), Fractionation Plant Operations Report (Form MMS-4057), and Production Allocation Schedule Report (Form MMS-4058).

(d) For purposes of solid minerals reporting under PAAS, a report is defined as each line of production information required on the Solid Minerals Operation Report (Form MMS-4059) and Solid Minerals Facility Report (Form MMS-4060).

(e) The MMS will not make assessments for reporting problems which are beyond the control of the reporter (e.g., reports received late because of bad weather). The reporter shall have the burden of proving that a reporting problem was unavoidable.

(f) An assessment under this section shall not be shared with a State, Indian tribe, Indian allottee, or Alaska Native Corporation.

## Subpart B—Oil and Gas, General

### § 216.50 [Reserved]

### § 216.51 Facility and Measurement Information Form and Supplement.

(a) The Facility and Measurement Information Form (Form MMS-4051) must be filed for each facility or measurement device which handles production from any Federal or Indian lease, or federally approved agreement, through the point of first sale or the point of royalty computation, whichever is later. The completed form must be filed by the operator of the facility or measurement device initially at the request of MMS during the conversion of facility and measurement device operators to the PAAS. After conversion, Form MMS-4051 must be filed with MMS/RMP no later than 30 days after establishment of a new facility or measurement device, or a change to an existing facility or measurement device which is not approved by the MMS/OCS.

(b) The Facility and Measurement Information Form-Supplement (Form MMS-4051 Supplement) must be filed for each facility or measurement device that handles production from any Federal or Indian lease, or federally approved agreement, through the point of first sale or the point of royalty computation, whichever is later, when such facility or measurement device is operated by any party other than the operator(s) of the lease(s) or approved agreement(s) served by said facility or measurement device. The completed form must be filed by each operator of the lease(s) or federally approved agreement(s) served by said facility or measurement device if that operator is not the same person that operates said facility or measurement device. Form MMS-4051 Supplement must be filed at the request of the

MMS initially during the conversion of lease and agreement operators to PAAS.

### § 216.52 Well Information Form.

The Well Information Form (Form MMS-4052) must be filed at the request of MMS for each Federal or Indian lease, or federally approved agreement, on which there exists at least one well that is not permanently plugged and abandoned. The completed form must be filed by the operator of the lease or agreement initially during the conversion of lease and agreement operators to the PAAS.

### § 216.53 First Purchaser Report.

The First Purchaser Report (Form MMS-4053) must be filed by first purchasers only upon the specific request of MMS.

### § 216.54 Oil and Gas Operations Report.

The Oil and Gas Operations Report (Form MMS-4054) must be filed by every operator of the lease or agreement for each Federal or Indian lease, or federally approved agreement, on which there exists at least one well that is not permanently plugged and abandoned. Completed Form MMS-4054 must be filed for each calendar month, beginning with the month in which drilling operations are initiated, and must be filed on or before the 15th day of the second month following the month being reported until the lease or agreement is terminated or the last well is permanently plugged or abandoned or until omission of the report is authorized by the MMS.

### § 216.55 Gas Analysis Report.

The Gas Analysis Report (Form MMS-4055) must be filed for each Federal or Indian lease, or federally approved agreement from which gas is transferred for processing prior to the point of royalty computation. The completed form must be filed by the operator of the lease or approved agreement. The form is due monthly or as specified by the gas sales contract terms but no less than semiannually, and must be submitted on or before the 15th day of the second month following the end of the reporting period to which the information applies.

### § 216.56 Gas Plant Operations Report.

The Gas Plant Operations Report (Form MMS-4056) must be filed for each gas plant that processes gas that originates from a Federal or Indian lease, or federally approved agreement, prior to the point of royalty computation, by the operator of the gas plant. Completed Form MMS-4056 must be filed for each calendar month, beginning with the month in which processing of gas originating from a Federal or Indian lease or federally approved agreement is initiated, and must be filed on or before the 15th day of the second month following the month being reported.

### § 216.57 Fractionation Plant Operations Report.

The Fractionation Plant Operations Report (Form MMS-4057) must be filed for each fractionation plant that fractionates raw make attributable to a Federal or Indian lease, or federally approved agreement, prior to the point of royalty computation for such lease or agreement. The completed form must be filed by the operator of the fractionation plant. Form MMS-4057 must be filed for each calendar month, beginning with the month in which fractionation of raw make originating from a Federal or Indian lease, or federally approved agreement is initiated, and must be filed on or before the 15th day of the second month following the month being reported.

### § 216.58 Production Allocation Schedule Report.

The Production Allocation Schedule Report (Form MMS-4058) shall be filed for each facility or measurement device where the production from a Federal or Indian lease or agreement is commingled with the production from one or more other Federal, Indian or non-Federal leases or agreements prior to measurement for royalty computation purposes. A report is not required whenever the leases/agreements involved are all Federal or all Indian; all have the same fixed royalty rate; all are operated by the same person; and the facility/measurement device is operated by the same person as the leases/agreements. The completed form must be filed by the operator of such facility or measurement device. Form MMS-4058 must be filed for each calendar month, beginning with the month in which handling or production covered by this section is initiated, and must be filed on or before the 15th day of the second month following the month being reported.

### § 216.61 API Well Number Change Report.

The API Well Number Change Report (Form MMS-4061) must be filed whenever there is a change to an existing API well number and/or the MMS assigned producing interval code within the PAAS, on which an Oil and Gas Operations Report (Form MMS-4054) have been filed. The completed form must be filed by the operator of the Federal or Indian lease, or federally approved agreement, with which the well is associated. Form MMS-4061 must be filed at least 10 days prior to the submission of an Oil and Gas Operations Report containing the new API well number and/or the MMS assigned producing interval code.

## Subpart C—Oil and Gas, Onshore [Reserved]

## Subpart D—Oil, Gas, and Sulfur, Offshore [Reserved]

## Subpart E—Solid Minerals, General

### § 216.200 [Reserved]

### § 216.201 Mine Information Report.

The Mine Information Form (Form MMS-4050) must be filed for each mine that includes Federal or Indian leases in its approved mining plan. The completed form must be filed by the operator of the mine/lease(s). Form MMS-4050 must be filed at the request of the MMS initially during the conversion of the mine/lease(s) to the PAAS.

### § 216.202 Facility and Measurement Information Form.

The Facility and Measurement Information Form (Form MMS-4051) must be filed for each facility or measurement device which handles solid mineral production from any Federal or Indian lease, or federally approved agreement, through the point of first sale or the point of royalty computation, whichever is applicable. The completed form must be filed by the operator of the facility or measurement device. Form MMS-4051 must be filed initially at the request of the MMS during the conversion of facility and measurement device operators to the PAAS. Subsequent to conversion, Form MMS-4051 must be filed with MMS/RMP no later than 30 days after establishment of a new facility or measurement device, or a change to any existing facility or measurement device that handles production attributable to any Federal or Indian lease, or federally approved agreement, through the point of first sale or royalty computation, whichever is applicable.

### § 216.203 Solid Minerals Operations Report.

The Solid Minerals Operation Report (Form MMS-4059) must be submitted by all Federal and Indian lease operators of producing mines that are part of an approved mine plan. Form MMS-4059 must be filed for the same period established for payment for royalties in the lease terms, unless a different reporting frequency is established by an MMS authorized official, and on or before the 15th day of the second month following the period being reported until all the leases within a mine are terminated or until omission of the report is authorized by the MMS.

### § 216.204 Solid Minerals Facility Report.

The Solid Minerals Facility Report (Form MMS-4060) must be filed by operators of secondary processing facilities that handle production attributable to Federal or Indian leases where royalty is determined after processing. The report period is monthly, unless a longer period is specified in the lease document, or otherwise approved by the MMS. The Form MMS-4060 must be filed on or before the 15th day of the second month following the period being reported.

## Subpart F—Coal—[Reserved]

## Subpart G—Other Minerals—[Reserved]

## Subpart H—Geothermal Resources—[Reserved]

## Subpart I—Indian Land—[Reserved]

# PART 217—AUDITS AND INSPECTIONS

Subpart A—General Provisions—[Reserved]

Subpart B—Oil and Gas, General

Sec.
217.50 Audits of records.
217.51 Lease account reconciliation.
217.52 Definition.

Subpart C—Oil and Gas, Onshore—[Reserved]

Subpart D—Oil, Gas and Sulfur, Offshore—[Reserved]

Subpart E—Coal

217.200 Audits.

Subpart F—Other Solid Minerals

217.250 Audits.

Subpart G—Geothermal—[Reserved]

Subpart H—Indian Lands—[Reserved]

AUTHORITY: 35 Stat. 312; 35 Stat. 781, as amended; secs. 32, 6, 26, 41 Stat. 450, 753, 1248; secs. 1, 2, 3, 44 Stat. 301, as amended; secs. 6, 3, 44 Stat. 659, 710; secs. 1, 2, 3, 44 Stat. 1057; 47 Stat. 1487; 49 Stat. 1482, 1250, 1967, 2026; 52 Stat. 347; sec. 10, 53 Stat. 1196, as amended; 56 Stat. 273; sec. 10, 61 Stat. 915; sec. 3, 63 Stat. 683; 64 Stat. 311; 25 U.S.C. 396, 396a-f, 30 U.S.C. 189, 271, 281, 293, 359. Interpret or apply secs. 5, 5, 44 Stat. 302, 1058, as amended; 58 Stat. 483-485; 5 U.S.C. 301, 16 U.S.C. 508b, 30 U.S.C. 189, 192c, 271, 281, 293, 359, 43 U.S.C. 387.

## Subpart A—General Provisions—[Reserved]

## Subpart B—Oil and Gas, General

AUTHORITY: The Federal Oil and Gas Royalty Management Act of 1982 (30 U.S.C. 1701 *et seq.*).

SOURCE: 49 FR 37345, Sept. 21, 1984, unless otherwise noted.

### § 217.50 Audits of records.

The Secretary, or his/her authorized representative, shall initiate and conduct audits relating to the scope, nature and extent of compliance by lessees, operators, revenue payors, and other persons with rental, royalty, net profit share and other payment requirements on a Federal or Indian oil and gas lease. Audits also will relate to compliance with applicable regulations and orders. All audits will be conducted in accordance with the notice and other requirements of 30 U.S.C. 1717.

### § 217.51 Lease account reconciliation.

Specific lease account reconciliations shall be performed with priority being given to reconciling those lease accounts specifically identified by a State or Indian tribe as having significant potential for underpayment.

### § 217.52 Definitions.

Terms used in this subpart shall have the same meaning as in 30 U.S.C. 1702.

## Subpart C—Oil and Gas, Onshore—[Reserved]

## Subpart D—Oil, Gas and Sulfur, Offshore—[Reserved]

## Subpart E—Coal

### § 217.200 Audits.

An audit of the accounts and books of operators/lessees for the purpose of determining compliance with Federal lease terms relating to Federal royalties may be required annually or at other times as directed by the Associate Director for Royalty Management. The audit shall be performed by a qualified independent certified public accountant or by an independent public accountant licensed by a State, territory, or insular possession of the United States or the District of Columbia, and at the expense of the operator/lessee. The operator/lessee shall furnish, free of charge, duplicate copies of audit reports that express opinions on such compliance to the Associate Director for Royalty Management within 30 days after the completion of each audit. Where such audits are required, the Associate Director for Royalty Management will specify the purpose and scope of the audit and the information which is to be verified or obtained.

[47 FR 33195, July 30, 1982. Redesignated at 48 FR 35641, Aug. 5, 1983]

## Subpart F—Other Solid Minerals

**§ 217.250 Audits.**

An audit of the lessee's accounts and books may be made annually or at such other times as may be directed by the mining supervisor, by certified public accountants, and at the expense of the lessee. The lessee shall furnish free of cost duplicate copies of such annual or other audits to the mining supervisor, within 30 days after the completion of each auditing.

[37 FR 11041, June 1, 1972. Redesignated at 48 FR 35641, Aug. 5, 1983]

## Subpart G—Geothermal—[Reserved]

## Subpart H—Indian Lands—[Reserved]

# PART 218—COLLECTION OF ROYALTIES, RENTALS, BONUSES AND OTHER MONIES DUE THE FEDERAL GOVERNMENT

### Subpart A—General Provisions

Sec.
218.40 Assessments for incorrect or late reports and failure to report.

### Subpart B—Oil and Gas, General

218.50 Timing of payment.
218.51 Method of payment.
218.52 Designated payor.
Sec.
218.53 Division of interests. [Reserved]
218.54 Late payments and underpayments.
218.55 Interest payments to Indians.
218.56 Definitions.

### Subpart C—Oil and Gas, Onshore

218.100 Royalty and rental payments.
218.101 Royalty and rental remittance (naval petroleum reserves).
218.102 Late payment or underpayment charges.
218.103 Payments to States.
218.104 Exemption of States from certain interest and penalties.
218.105 Definitions.

### Subpart D—Oil, Gas and Sulfur, Offshore

218.150 Royalties, net profit shares, and rental payments.
218.151 Rentals.
218.152 Fishermen's Contingency Fund.
218.153 Fishermen's Contingency Fund.
218.154 Effect of suspensions on royalty and rental.
218.155 Method of payment.

### Subpart E—Solid Minerals—General

218.200 Late payment or underpayment charges.

### Subpart F—Geothermal Resources

218.300 Royalty payments.
218.301 Late payment or underpayment charges.

### Subpart G—Indian Lands—[Reserved]

AUTHORITY: The Act of February 25, 1920 (30 U.S.C. 181 *et seq.*) as amended; the Act of May 21, 1930 (30 U.S.C. 301-306); the Minerals Leasing Act for Acquired Lands (30 U.S.C. 351-359), as amended; the Act of March 3, 1909 (25 U.S.C. 396), as amended; the National Environmental Policy Act of 1969 (42 U.S.C. 4321 *et seq.*) as amended; the Act of May 11, 1938 (25 U.S.C. 396a 396q), as amended; the Act of February 28, 1891 (25 U.S.C. 397), as amended; the Act of May 29, 1924 (25 U.S.C. 398); the Act of March 3, 1927 (25 U.S.C. 398a-398e); the Act of June 30, 1919 (25 U.S.C. 399), as amended; R.S. § 441 (43 U.S.C. 1457), see also Attorney General's Opinion of April 2, 1941 (40 Op. Atty. Gen. 41); the Federal Property and Administrative Services Act of 1949 (40 U.S.C. 471 *et seq.*), as amended; the Act of December 12, 1980 (Pub. L. 96-514, 94 Stat. 2964); the Combined Hydrocarbon Leasing Act of 1981 (Pub. L. 97-78, 95 Stat. 1070); the Outer Continental Shelf Lands Act (43 U.S.C. 1331 *et seq.*), as amended; sec. 2 of Reorganization Plan No. 3 of 1950 (64 Stat.

1262); Secretarial Order No. 3071 of January 19, 1982, as amended; Secretarial Order 3087, as amended; The Indian Mineral Development Act of 1982 (25 U.S.C. 2101 *et seq.*); and the Federal Oil and Gas Royalty Management Act of 1982 (30 U.S.C. 1701 *et seq.*).

## Subpart A—General Provisions

### § 218.40 Assessments for incorrect or late reports and failure to report.

(a) An assessment of $10.00 per day may be charged for each report not received by MMS by the designated due date.

(b) An assessment of $10.00 per day may be charged for each report received by the designated due date but which is incorrectly completed.

(c) For purposes of reports required for the Auditing and Financial System (AFS), a report is defined as each line item on a Form MMS-2014 or Form MMS-4014. The line item consists of the various information, such as Product Code or Selling Arrangement Code, relating to each Accounting Identification Number (AID).

(d) An assessment under this section shall not be shared with a State, Indian tribe, or Indian allottee.

[49 FR 37346, Sept. 21, 1984. Redesignated and amended at 51 FR 15767, Apr. 28, 1986]

## Subpart B—Oil and Gas, General

AUTHORITY: The Federal Oil and Gas Royalty Management Act of 1982 (30 U.S.C. 1701 *et seq.*).

SOURCE: 49 FR 37346, Sept. 21, 1984, unless otherwise noted.

### § 218.50 Timing of payment.

(a) Royalty payments are due at the end of the month following the month during which the oil and gas is produced and sold except when the last day of the month falls on a weekend or holiday. In such cases, payments are due on the first business day of the succeeding month. Rental payments are due as specified by the lease terms.

(b) Payments made on a Bill for Collection (Form DI-1040b) are due as specified by the Bill. Bills for Collection will be issued and payable as final collection actions.

(c) All payments to MMS are due as specified and are not deferred or suspended by reason of an appeal having been filed unless such deferral or suspension is approved in writing by an authorized MMS official.

### § 218.51 Method of payment.

(a) *Payment of royalties.* (1) All payors whose aggregated royalty liability to the MMS on the payment due date totals $50,000 or more, must make payment by electronic funds transfer (EFT), utilizing the Federal Reserve Communications System link to the Treasury Financial Communications System, unless otherwise directed by the Secretary. Early payment by other than EFT of a portion of the aggregated royalty liability to avoid remittance by EFT on the payment due date is not permitted. Such early payments are permitted regardless of amount but must be remitted by EFT. Payments to MMS by EFT shall begin only after the payor has received instructions from the MMS Royalty Management Accounting Center (RMAC) in Lakewood, Colorado.

(b) Each payor, whose aggregated remittance for royalties on payment due date is less than $50,000, must use one of the following payment instruments:

(1) Federal Reserve check.

(2) Commercial check.

(3) Money Order.

(4) Bank Draft.

(5) Cashier's check.

(6) Certified check.

(7) Electronic Funds Transfer.

(c) All payment instruments except EFT should be inscribed payable to "Department of the Interior—MMS."

(d) *Payment of rentals.* (1) Payment of rentals to MMS-RMAC (other than the first year rentals) must be made by one of the methods shown in paragraph (b) of this section. First year rentals from offshore leases are paid in accordance with § 218.155.

(e) *Where to pay.* (1) The mailing address for Form MMS-2014 and the applicable payment is: Royalty Management Program, Minerals Management Service P.O. Box 5810 T.A. Denver, Colorado 80217. Use P.O. Box 5640

T.A. with the above address to send payments for Federal non-producing leases not required to be reported on the Form MMS-2014 report.

(2) Payments received after 4:00 p.m. mountain time, are considered next day receipts.

(f) *General payment information.* (1) Payments for offshore and onshore Federal leases shall be segregated from payments for Indian leases. All payments shall be made by one of the methods shown in paragraph (b) of this section. For payments made by EFT, the deposit message shall include information as prescribed by the RMAC.

(2) For Indian payments by check, the following instructions are applicable:

(i) For Indian allotted leases, payments shall be aggregated and identified on a single check for each respective BIA agency/area office having jurisdiction over the lease(s) for which the payment is made.

(ii) For Indian tribal leases, payments shall be aggregated and identified for each respective Indian tribe for whom the royalty is owed.

(iii) When payments are made on an aggregated basis (single check), the payment identification required in paragraphs (f)(2) (i) and (ii) of this section shall be provided in a format to be specified by MMS.

### § 218.52 Designated payor.

(a) When the lessee or revenue payor assigns any paying responsibility to any other entity, MMS must be notified within 30 days of the assignment.

(b) MMS may, by order, designate a lessee or revenue payor on a lease as the single payor for all revenues due and owing from that lease.

### § 218.53 Division of interests. [Reserved]

### § 218.54 Late payments and underpayments.

(a) An interest charge shall be assessed on unpaid and underpaid amounts from the date the amounts are due.

(b) The interest charge on late payments and underpayments shall be at the rate applicable under Section 6621 of the Internal Revenue Code of 1954.

(c) Interest will be charged only on the amount of the payment not received. Interest will be charged only for the number of days the payment is late.

(d) A portion of the interest collected will be paid to a State where the State shares in mineral revenues from Federal leases.

### § 218.55 Interest payments to Indians.

(a) All interest collected from unpaid or underpayments on Indian tribal or allotted leases will be paid to the tribe or allottee.

(b) Any disbursement of Indian mineral revenues not made by the due date as required in § 219.103 of this chapter shall accrue interest.

(c) Interest shall be computed at the rate applicable under Section 6621 of the Internal Revenue Code of 1954.

(d) The interest shall be payable only for the number of days the disbursement is late.

### § 218.56 Definitions.

Terms used in this subpart shall have the same meaning as in 30 U.S.C. 1702.

[49 FR 37346, Sept. 21, 1984. Redesignated at 51 FR 15767, Apr. 28, 1986]

## Subpart C—Oil and Gas, Onshore

### § 218.100 Royalty and rental payments.

(a) When due in money, the lessee shall tender all payments of rental and royalty by check or draft on a solvent bank, or by money order drawn to the order of the appropriate receiving officer, in accordance with statements rendered by the Associate Director pursuant to § 202.100, or in the case of public-land leases in accordance with instructions of the Bureau of Land Management.

(b) If the lessor elects to take royalty in oil or gas, unless otherwise agreed upon, such royalty shall be delivered on the leasehold, by the lessee to the order of and without cost to the lessor, as instructed by the Associate Director.

[47 FR 47773, Oct. 27, 1982. Redesignated at 48 FR 35641, Aug. 5, 1983]

### § 218.101 Royalty and rental remittance (naval petroleum reserves).

Remittance covering payments of royalty or rental on naval petroleum reserves must be accomplished by necessary identification information and sent direct to the Director, Naval Petroleum Reserves in California.

[47 FR 47773, Oct. 27, 1982. Redesignated at 48 FR 35641, Aug. 5, 1983]

### § 218.102 Late payment or underpayment charges.

(a) The failure to make timely or proper payments of any monies due pursuant to leases, permits, and contracts subject to these regulations will result in the collection by the MMS of the full amount past due plus a late payment charge. Exceptions to this late payment charge may be granted when estimated payments on minerals production have already been made timely and otherwise in accordance with instructions provided by MMS to the payor. However, late payment charges assessed with respect to any Indian lease, permit, or contract shall be collected and paid to the Indian or tribe to which the amount overdue is owed.

(b) Late payment charges are assessed on any late payment or underpayment from the date that the payment was due until the date on which the payment is received in the appropriate MMS accounting office. Payments received after 4 p.m. local time on the date due will be acknowledged as received the following workday.

(c) Late payment charges apply to all underpayments and payments received after the date due. The charges include production and minimum royalties; assessments for liquidated damages; administrative fees and payments by purchasers of royalty taken-in-kind; or any other payments, fees, or assessments that a lessee/operator/permittee/payor/royalty taken-in-kind purchaser is required to pay by a specified date. The failure to pay past due amounts, including late-payment charges, will result in the initiation of other enforcement proceedings.

[47 FR 47773, Oct. 27, 1982. Redesignated at 48 FR 35641, Aug. 5, 1983, and amended at 49 FR 37347, Sept. 21, 1984]

### § 218.103 Payments to States.

(a) Any amount that is payable by MMS to a State but is not paid on the due date, as specified in § 219.100 of this chapter, or that is held in a suspense account pending resolution of a dispute as specified in § 219.101 of this chapter, shall accrue interest payable to the State.

(b) Interest shall be computed at the rate applicable under Section 6621 of the Internal Revenue Code of 1954.

(c) Interest shall be computed only for the number of days the disbursement is late. In the case of suspended amounts subject to interest, it shall be computed beginning with the calendar day following the day that the monies normally would have been paid to the State had they not been in suspense.

[49 FR 37347, Sept. 21, 1984]

### § 218.104 Exemption of States from certain interest and penalties.

(a) States are exempt from being assessed for any interest or penalties found to be due against the Department of the Interior for failure to comply with the Emergency Petroleum Allocation Act of 1973, as amended, or any regulation issued by the Secretary of Energy thereunder concerning the certification or processing of crude oil taken in-kind as royalty by the Secretary.

(b) Any State shall be assessed for its share of any overcharge resulting from a determination that DOI failed to comply with the Emergency Petroleum Allocation Act of 1973, as amended. Each State's share shall be assessed against monies owed to the State. Such assessment shall be first against monies owed to such State as a result of royalty audits prior to January 12, 1983, the enactment date of the Federal Oil and Gas Royalty Management Act of 1982, then against other monies owed. The State shall be liable for any balance.

(c) A State's liability for repayment of an overcharge under this section shall exist for any amounts resulting from a judgment in a civil suit or as the result of settlement of a claim through a negotiated agreement. State liability would be offset against future mineral revenue distributions to the State.

[49 FR 37347, Sept. 21, 1984]

**§ 218.105 Definitions.**

Terms used in this subpart have the same meaning as in 30 U.S.C. 1702.

[49 FR 37347, Sept. 21, 1984]

## Subpart D—Oil, Gas and Sulfur, Offshore

**§ 218.150 Royalties, net profit shares, and rental payments.**

(a) As specified under the provisions of the lease, the lessee shall pay all rental when due, and shall pay in value or deliver in production all royalties and net profit shares in the amounts of value or production determined by the Director to be due. Payments of rental, royalties, and net profit shares in value shall be by electronic transfer of funds or by check or draft on a solvent bank or by money order drawn to the order of the Minerals Management Service (MMS).

(b) The failure to make timely or proper payments of any monies due pursuant to leases, permits, and contracts subject to these regulations will result in the collection of the amount past due plus a late payment charge. Exceptions to this late payment charge may be granted when estimated payments on minerals production have already been made timely and otherwise in accordance with instructions provided by MMS to the payor.

(c) Late payment charges are assessed on any late payment or underpayment from the date that the payment was due until the date on which the payment is received in the appropriate MMS accounting office. Payments received after 4 p.m. local time on the date due will be acknowledged as received on the following workday.

(d) Late payment charges apply to all underpayments and payments received after the date due. These charges include production and minimum royalties; assessments for liquidated damages; administrative fees and payments by purchasers of royalty taken-in-kind; or any other payments, fees, or assessments that a lessee/operator/payor/permittee/royalty taken-in-kind purchaser is required to pay by a specified date. The failure to pay past due amounts, including late payment charges, will result in the initiation of other enforcement proceedings.

[47 FR 22528, May 25, 1982. Redesignated at 48 FR 35641, Aug. 5, 1983, and amended at 49 FR 37347, Sept. 21, 1984]

**§ 218.151 Rentals.**

(a) Except for leases issued subject to net profit sharing provisions, an annual rental shall be due and payable in advance, at the rate specified in the oil and gas leases, on the first day of each lease year prior to discovery of oil or gas on the lease.

(b) The owner of any lease created by the segregation of a portion of a producing lease which is not subject to net profit sharing provisions and on which segregated portion there is no production, actual or allocated, shall pay an annual rental for such segregated portion at the rate per acre or hectare specified in the lease. This rental shall be payable each lease year following the year in which the segregation became effective and prior to a discovery on such segregated portion.

(c) Annual rental paid in any year shall be in addition to, and shall not be credited against, any royalties due from production.

(d) An annual rental on a lease for a mineral other than oil or gas, shall be due and payable, in advance, on the first day of each lease year prior to discovery in paying quantities, at a rate specified in the lease form.

(e) For leases issued subject to the net profit sharing provisions, annual rental payments shall be due and payable in advance, on the first day of each lease year which commences prior to the date the first profit share payment becomes due. The owner of any lease created by the segreation of a portion of a lease subject to net profit sharing provisions, shall pay an annual rental for such segregated portion at the rate per acre or hectare specified in the lease. This rental shall be payable each year following the year in which the segregation becomes effective and shall continue to be due and payable, in advance, on the first day of each year which commences prior to the date the first profit share payment becomes due.

[44 FR 38276, June 29, 1979, as amended at 45 FR 69175, Oct. 17, 1980; 47 FR 25972, June 16, 1982. Redesignated at 47 FR 47006, Oct. 22, 1982, and at 48 FR 35641, Aug. 5, 1983]

### § 218.152 Fishermen's Contingency Fund.

Upon the establishment of an account under the Fishermen's Contingency Fund, pursuant to subsection 402(b) of the Act, for any area of the OCS, any holder of a lease, issued or maintained under the Act, for any tract in the area covered by the account, and any holder of an exploration permit or of an easement or right-of-way for the construction of a pipeline, in the area covered by the account, shall pay an amount specified by the Secretary of Commerce for the purpose of the establishment and maintenance of the account for the area. The Director shall collect the amount specified and deposit it in the Fund to the credit of the appropriate area account.

[44 FR 61892, Oct. 26, 1979. Redesignated at 48 FR 35641, Aug. 5, 1983]

### § 218.153 Fishermen's Contingency Fund.

Upon the establishment of an account under the Fishermen's Contingency Fund for any area of the OCS pursuant to subsection 402(b) of the Act, the holder of a permit for geological or geophysical exploration activities for mineral resources in the area covered by the account shall pay an amount specified by the Secretary of Commerce for the purpose of the establishment and maintenance of an account for the area. At the time of issuing a permit, the Director shall collect the amount specified and deposit it in the Fund to the credit of the appropriate account.

[45 FR 6344, Jan. 25, 1980. Redesignated at 48 FR 35641, Aug. 5, 1983]

### § 218.154 Effect of suspensions on royalty and rental.

(a) If under the provisions of 30 CFR 250.12(a)(1) (ii), (iii) or (iv), the Director, with respect to any lease, directs the suspension of both operations and production, or, with respect to a lease on which there is no producible well, directs the suspension of operations, no payment of rental or minimum royalty shall be required for or during the period of suspension.

(b) The lessee shall not be relieved of the obligation to pay rental, minimum royalty or royalty for or during the period of suspension if the Director:

(1) Under the provisions of 30 CFR 250.12 (b)(1) or (c) approves, at the request of a lessee, the suspension of operations or production, or both, or

(2) Under the provisions of 30 CFR 250.12 (a)(1)(i) or (c) suspends any operation, including production.

(c) If the lease anniversary date falls within a period of suspension for which no rental or minimum royalty payments are required under paragraph (a) of this section, the prorated rentals or minimum royalties are due and payable as of the date the suspension period terminates. These amounts shall be computed and notice thereof given the lessee. The lessee shall pay the amount due within 30 days after receipt of such notice. The anniversary date of a lease shall not change by reason of any period of lease suspension or rental or royalty relief resulting therefrom.

[44 FR 38276, June 29, 1979; 44 FR 55380, Sept. 26, 1979. Redesignated and amended at 47 FR 47006, 47007, Oct. 22, 1982. Further redesignated at 48 FR 35641, Aug. 5, 1983 and amended at 51 FR 19063, May 27, 1986]

### § 218.155 Method of payment.

(a) *Payment of royalties.* (1) All payors (as defined in paragraph (a)(4) of this section), whose aggregated royalty liability to the Minerals Management Service (MMS) on payment due date totals $50,000 or more, must make payment by electronic funds transfer (EFT), through the Federal Reserve Communications System (FRCS) link to the Treasury Financial

Communications System (TFCS), unless otherwise directed by the Secretary. Early payment prior to payment due date of all or a portion of the $50,000 or more aggregated royalty liability is permitted, but the payment must be made by EFT.

(2) When the aggregated royalty liability on the payment due date totals less than $50,000, payors must remit by one of the methods described in paragraph (d) of this section.

(3) Payments to MMS by EFT shall begin only after the payor has received instructions from the MMS Royalty Management Accounting Center in Lakewood, Colorado.

(4) A payor is defined as an entity which has been assigned a payor code number by the MMS—Royalty Management Accounting Center, in Denver, Colorado. A corporation may have one or more payor codes, each representing a division, group of divisions or a disbursement center.

(b) *Payment of the one-fifth bonus bid amount.* (1) Each lease bid must include a payment for the one-fifth bonus bid deposit amount unless the bidder is otherwise directed by the Secretary. Further instructions on how to make payment with the bid will be included in the notice of each lease offering. EFT cannot be used as a method of payment for the one-fifth bonus bid amount.

(2) Beginning with lease offerings held after February 1, 1984, the one-fifth bonus amount received from a high bidder shall be deposited into an escrow account created pursuant to an agreement between the Departments of the Interior and Treasury, pending acceptance or rejection of the bid. The one-fifth bonus funds will be invested in public debt securities. Investment of this amount by the U.S. Government does not indicate acceptance of the bid. The one-fifth bonus checks submitted with bids other than the highest valid bid shall be returned to respective bidders after bids are opened, recorded, and ranked. Return of such checks will not affect the status, validity, or ranking of bids. The one-fifth bonus bid amount received from any high bidder and held by the Government pending acceptance or rejection, will be returned with actual interest earned, if the bid is subsequently rejected. The interest accrued during the period held in the account pending acceptance or rejection of the bid will accrue to the Government when the bid is accepted.

(c) *Payment of the four-fifths bonus bid amount and the first year's rental.* Payment shall be made to MMS by EFT unless otherwise directed by the Secretary. The payment by EFT via the FRCS must be received by the Federal Reserve Bank of New York no later than noon, eastern standard time, on the 11th business day after receipt of the lease forms by the successful bidder. A "business day" is considered to be a day on which the OCS regional office issuing the lease is open for business. The lease will not be executed by the appropriate MMS official until payment is received. Failure to remit by EFT or as directed by the Secretary within the time specified above will result in forfeiture of the one-fifth bonus bid amount and the lease will not be executed by the appropriate MMS official. Payors will not be held responsible for late payment due to actions beyond their control, such as mechanical or systems failure of FRCS or TFCS. Payors will be held responsible for incorrect actions of their bank which result in late payments. A 2-day grace period will be allowed to make up a deficient payment, but a late payment charge will be assessed for this late payment and a penalty will also be assessed if appropriate. Late payment charges will be assessed in accordance with Subpart B of this part.

(d) *Payment of leased mineral land rentals (other than the first-year rental).* Each payor of rentals, in any amount, must use one of the following payment instruments made payable to "Department of the Interior—MMS":

(1) Federal Reserve check;

(2) Commercial check;

(3) Money order;

(4) Bank draft;

(5) Cashier check;

(6) Certified check; and

(7) Electronic funds transfer (requires special instructions from the MMS Accounting Center before use).

(e) *General.* (1) Payors using the appropriate means of payment (EFT, check, etc.) may pay for multiple lease obligations with a single remittance but must ensure that the payment complies with Subpart B of this part and the remittance advice adequately identifies the single payment. The format to be used for such identification will be provided by the MMS Accounting Center.

(2) Where to pay.

(3) The mailing address for payments to MMS (other than EFT), is available through OCS field offices. This information can also be obtained by contacting the MMS Royalty Management Accounting Center, Denver Federal Center, at Lakewood, Colorado.

(4) Payments received after 4:00 pm, mountain standard time, are considered next day receipts.

(f) *Miscellaneous payments.* Payments shall be made to the manager of the appropriate Outer Continental Shelf field office by cash, check or bank draft payable to "Department of the Interior—MMS" for miscellaneous payments such as:

(1) Pipeline rights-of-way application filing fees and rentals, pipeline accessory site rentals and application fees, and other related costs.

(2) Filing and approval fees for transfers of interest in leases.

[49 FR 8605, Mar. 8, 1984]

## Subpart E—Solid Minerals—General

### § 218.200 Late payment or underpayment charges.

(a) The failure to make timely or proper payment of any monies due pursuant to leases and contracts subject to these rules will result in the collection by MMS of the full amount past due plus a late payment charge. Exceptions to this late payment charge may be granted when estimated payments on minerals production have already been made timely and otherwise in accordance with instructions provided by MMS to the operator/lessee. However, late payment charges assessed with respect to any Indian lease, permit, or contract shall be collected and paid to the Indian or tribe to which the amount overdue is owed.

(b) Late payment charges are assessed on any late payment or underpayment from the date that the payment was due until the date on which the payment is received in the appropriate MMS accounting office. Payments received after 4 p.m. local time on the date due will be acknowledged as received on the following workday.

(c) Late payment charges are calculated on the basis of a percentage assessment rate. In the absence of a specific lease, permit, license, or contract provision prescribing a different rate, this percentage assessment rate is prescribed by the Department of the Treasury as the "Treasury Current Value of Funds Rate."

(d) This rate is available in the Treasury Fiscal Requirements Manual Bulletins that are published prior to the first day of each calendar quarter for application to overdue payments or underpayments in the new calendar quarter. The rate is also published in the Notices section of the FEDERAL REGISTER and indexed under "Fiscal Service/Notices/Funds Rate; Treasury Current Value."

(e) Late payment charges apply to all underpayments and payments received after the date due. These charges include production, minimum, or advance royalties; assessments for liquidated damages, or any other payments, fees, or assessments that an operator/lessee is required to pay by a specified date. The failure to pay past due payments, including late payment charges, will result in the initiation of other enforcement proceedings.

[47 FR 33195, July 30, 1982; 47 FR 53366, Nov. 26, 1982. Redesignated at 48 FR 35641, Aug. 5, 1983]

## Subpart F—Geothermal Resources

### § 218.300 Royalty payments.

The lessee shall pay all royalties as due under the terms of the lease. Payments of royalties are due not later than the last day of the month following the month in which the resource is sold or utilized, and shall be by check, bank draft, or money order, drawn to the order of the Minerals Management Service.

[38 FR 35068, Dec. 31, 1973. Redesignated at 48 FR 35641, Aug. 5, 1983, and further redesignated at 51 FR 15767, Apr. 28, 1986]

**§ 218.301 Late payment or underpayment charges.**

(a) The failure to make timely or proper payment of any monies due pursuant to leases and contracts subject to these regulations will result in the collection by the Minerals Management Service (MMS) of the full amount past due plus a late payment charge. Exceptions to this late payment charge may be granted when estimated payments on minerals production have already been made timely and otherwise in accordance with the instructions provided by the MMS to the payor.

(b) Late payment charges are assessed on any late payment or underpayment from the date that the payment was due until the date on which the payment is received in the appropriate MMS accounting office. Payments received after 4 p.m. local time on the date due will be acknowledged as received on the following workday.

(c) Late payment charges are calculated on the basis of a percentage assessment rate. In the absense of a specific lease, permit, license, or contract provision prescribing a different rate, this percentage assessment rate is prescribed by the Department of the Treasury as the "Treasury Current Value of Funds Rate."

(d) This rate is available in the Treasury Fiscal Requirements Manual Bulletins that are published prior to the first day of each calendar quarter for application to overdue payments or underpayments in that new calendar quarter. The rate is also published in the Notices section of the FEDERAL REGISTER and indexed under "Fiscal Service/Notices/Funds Rate; Treasury Current Value."

(e) Late payment charges apply to all underpayments and payments received after the date due. These charges include production, minimum, and compensatory royalties; assessments for liquidated damages; administrative fees and payments by purchasers of royalty taken-in-kind; or any other payments, fees, or assessments that a lessee/operator/payor/royalty taken-in-kind purchaser is required to pay by a specified date. The failure to pay past due payments, including late payment charges, will result in the initiation of other enforcement proceedings.

[47 FR 22528, May 25, 1982. Redesignated at 48 FR 35641, Aug. 5, 1983 and further redesignated at 51 FR 15767, Apr. 28, 1986]

## Subpart G—Indian Lands—[Reserved]

# PART 219—DISTRIBUTION AND DISBURSEMENT OF ROYALTIES, RENTALS, AND BONUSES

Subpart A—General Provision [Reserved]

Subpart B—Oil and Gas, General [Reserved]

Subpart C—Oil and Gas, Onshore

Sec.
219.100 Timing of payment to States.
219.101 Receipts subject to an interest charge.
219.102 Method of payment.
219.103 Payments to Indian accounts.
219.104 Explanation of payments to States and Indian tribes.
219.105 Definitions.

AUTHORITY: The Federal Oil and Gas Royalty Management Act of 1982 (30 U.S.C. 1701 *et seq.*).

SOURCE: 49 FR 37347, Sept. 21, 1984, unless otherwise noted.

## Subpart A—General Provisions—[Reserved]

## Subpart B—Oil and Gas, General [Reserved]

## Subpart C—Oil and Gas, Onshore

**§ 219.100 Timing of payment to States.**

A State's share of mineral leasing revenues shall be paid to the State not later than the last business day of the month in which the United States Treasury issues a warrant authorizing the disbursement, except for any portion of such revenues which is under challenge and placed in a suspense account pending resolution of a dispute.

### § 219.101 Receipts subject to an interest charge.

(a) Subject to the availability of appropriations, the Minerals Management Service (MMS) shall pay the State its proportionate share of any interest charge for royalty and related monies that are placed in a suspense account pending resolution of matters which will allow distribution and disbursement. Such monies not disbursed by the last business day of the month following receipt by MMS shall accrue interest until paid.

(b) Upon resolution, the suspended monies found due in paragraph (a) of this section, plus interest, shall be disbursed to the State under the provisions of § 219.100.

(c) Paragraph (a) of this section shall apply to revenues which cannot be disbursed to the State because the payor/lessee provided incorrect, inadequate, or incomplete information to MMS which prevented MMS from properly identifying the payment to the proper recipient.

### § 219.102 Method of payment.

The MMS shall disburse monies to a State either by Treasury check or by Electronic Funds Transfer (EFT). Should the State prefer to receive its payment by EFT, it should request this payment method in writing to the Minerals Management Service, P.O. Box 5760, Denver, Colorado 80217.

### § 219.103 Payments to Indian accounts.

Mineral revenues received from Indian leases shall be transferred to the appropriate Indian accounts managed by the Bureau of Indian Affairs (BIA) for allotted and tribal revenues. These accounts are specifically designated Treasury accounts. Revenues shall be transferred to the Indian accounts at the earliest practicable date after such funds are received, but in no case later than the last business day of the month in which revenues are received by the MMS.

### § 219.104 Explanation of payments to States and Indian tribes.

(a) Payments to States and BIA on behalf of Indian tribes or Indian allottees discussed in this part shall be described in *Explanation of Payment* reports prepared by the MMS. These reports will be at the lease level and shall include a description of the type of payment being made, the period covered by the payment, the source of the payment, sales amounts upon which the payment is based, the royalty rate, and the unit value. Should any State or Indian tribe desire additional information pertaining to mineral revenue payments, the State or tribe may request this information from the MMS.

(b) The report shall be provided to: (1) States not later than the 10th day of the month following the month in which MMS disburses the State's share of royalties and related monies; (2) the BIA on behalf of tribes and Indian allottees not later than the 10th day of the month following the month the funds are disbursed by MMS.

(c) Revenues that cannot be distributed to States, tribes, or Indian allottees because the payor/lessee provided incorrect, inadequate, or incomplete information, preventing MMS from properly identifying the payment to the proper recipient, shall not be included in the reports until the problem is resolved.

### § 219.105 Definitions.

Terms used in this subpart shall have the same meaning as in 30 U.S.C. 1702.

## PART 220—ACCOUNTING PROCEDURES FOR DETERMINING NET PROFIT SHARE PAYMENT FOR OUTER CONTINENTAL SHELF OIL AND GAS LEASES

Sec.

220.001 Purpose and scope.
220.002 Definitions.
220.010 NPSL capital account.
220.011 Schedule of allowable direct and allocable joint costs and credits.
220.012 Overhead allowance.
220.013 Unallowable costs.
220.014 Allocation of joint costs and credits.
220.015 Pricing of materiel purchases, transfers, and dispositions.
220.020 Calculation of the allowance for capital recovery.
220.021 Determination of net profit share base.

AVAILABLE

Sec.
220.022 Calculation of net profit share payment.
220.030 Maintenance of records.
220.031 Reporting and payment requirements.
220.032 Inventories.
220.033 Audits.
220.034 Redetermination and appeals.

AUTHORITY: Sec. 205, Pub. L. 95-372, 92 Stat. 643 (43 U.S.C. 1337).

SOURCE: 45 FR 36800, May 30, 1980, unless otherwise noted. Redesignated at 48 FR 1182, Jan. 11, 1983, and at 48 FR 35642, Aug. 5, 1983.

EDITORIAL NOTE: Nomenclature changes to this part appear at 48 FR 1182, Jan. 11, 1983.

### § 220.001 Purpose and scope.

(a) This Part 220 establishes accounting procedures for determining the net profit share base and calculating net profit share payments due the United States for the production of oil and gas from OCS leases.

(b) The procedures established by this Part 220 apply to any OCS lease issued by the Department of the Interior under any bidding system established by § 260.110(a) of this chapter which has a net profit share component.

[45 FR 36800, May 30, 1980, as amended at 46 FR 29689, June 2, 1981. Redesignated at 48 FR 1182, Jan. 11, 1983, and at 48 FR 35642, Aug. 5, 1983]

### § 220.002 Definitions.

For purposes of this Part 220:

"*Allowance for capital recovery*" means the amount calculated according to procedures specified in § 220.020. This amount allows a premium for risk initially undertaken by the lessee and a return on investment made during the capital recovery period. It is provided in lieu of interest on equipment and materiel charged to the NPSL capital account.

"*Capital recovery period*" means the period of time that begins on the date of issuance of the NPSL and ends on the last day of the month during which the sooner of the following occurs:

(1) The lessee completes the last well on the first platform specified in the development and production plan originally approved by the MMS, with any approved amendments thereto, and installation of wellhead equipment. In the event the last well is dry, then the capital recovery period shall be deemed to have ended with the determination that the last well is nonproductive;

(2) The balance in the NPSL capital account changes from a debit balance to a credit balance; or

(3) The lessee, at his election, chooses to terminate the capital recovery period. A decision to terminate the capital recovery period prior to the events specified in paragraphs (a) (1) and (2) of this definition shall be communicated in writing to the Director and shall be irrevocable.

"*Controllable materiel*" means materiel which at the time is so classified in the Materiel Classification Manual as most recently recommended by the Council of Petroleum Accountants Societies of North America.

"*Cost*" means an expenditure or an accrual incurred by a lessee in conducting NPSL operations.

"*Cost pool*" means a grouping of costs identified with more than one OCS lease, whether the leases are NPSLs or other types of leases.

"*Credit*" means a payment, rebate, reimbursement to a lessee, or other reduction in cost or increase in revenue attributable to NPSL operations.

"*Direct cost*" means any cost listed in § 220.011 that benefits only NPSL operations.

"*Director*" means the Director of MMS, Washington, D.C., or his delegate.

"*Field employee*" means an employee below a first level supervisor who is directly employed in the NPSL project area.

"*First level supervisor*" means an employee whose primary function in NPSL operations is the direct supervision of other employees and/or contract labor directly employed on the NPSL project area in a field operating capacity.

"*G & G*" means geological, geophysical, geochemical and other similar investigations carried out on the NPSL tract.

"*Joint cost*" means any cost listed in § 220.011 that benefits NPSL operations and one or more other operations of the lessee or an outside party.

"*Lessee*" means a person authorized by an OCS lease, or an approved assignment thereof, to develop and produce oil and gas, including all parties holding such authority by or through the lessee, and the person designated to conduct NPSL operations.

"*Lessee's cost of allowed employee absence*" means the lessee's cost of holiday, vacation, sickness, disability benefits, jury duty and other customary excused allowances.

"*Materiel*" means equipment, apparatus, and supplies.

"*Net profit share base*" means the end of the month credit balance in the NPSL capital account determined pursuant to § 220.021. The net profit share base is the production revenue remaining after subtracting all allowable costs and adding all allowable credits (including production revenue) in accordance with the procedures established by this Part 220.

"*Net profit share payment*" means the portion of the net profit share base payable to the United States.

"*Net profit share rate*" means the percentage share of the net profit share base payable to the United States. The percentage share may be fixed in the notice of OCS lease sale or be the bid variable, depending upon the bidding system used, as established by § 260.110(a) of this chapter.

"*NPSL*" means a net profit share lease, which is an OCS lease that provides for payment to the United States of a percentage share of the net profits for production of oil and gas from the tract. This percentage share may be fixed in the notice of OCS lease sale or be the bid variable, depending on the bidding system used, as established by § 260.110(a) of this chapter.

"*NPSL operations*" means all activities subsequent to issuance of the NPSL necessary and proper for the exploration, development, operation, maintenance, and final abandonment of the NPSL property.

"*NPSL project area*" means the NPSL tract, offshore facilities, and shore base facilities.

"*NPSL property*" means the NPSL tract, and materiel and offshore facilities acquired for use in NPSL operations and that are installed and/or used on the NPSL tract.

"*NPSL tract*" means a tract subject to an NPSL.

"*OCS lease*" means a Federal lease for oil and gas issued under the OCSLA.

"*OCS lease sale*" means the DOI proceeding by which leases for certain OCS tracts are offered for sale by competitive bidding and during which bids are received, announced, and recorded.

"*Offshore facilities*" means platform and support systems located offshore that are necessary to conduct NPSL operations, *e.g.*, oil and gas handling facilities, living quarters, offices, shops, cranes, electrical supply equipment and systems, fuel and water storage and piping, heliport, marine docking installations, communication facilities, and navigation aids.

"*Outside party*" means any person who is not a lessee.

"*Person*" means person as defined in Part 260 of this chapter.

"*Personal expenses*" means travel and other reasonable reimbursable expenses of lessee's employees.

"*Production*" means all oil, gas, or other hydrocarbon products produced, removed, saved, or sold from the NPSL property. Gas and liquids of all kinds are included in production. Production includes the allocated share of production from a unit of which the NPSL is a part.

"*Production revenue*" means the value of all production attributable to an NPSL property, which value is determined in accordance with § 260.110(b) of this chapter.

"*Railway receiving point*" or "*recognized barge terminal*" means the location that a vendor would use in determining the sale price to the lessee of new materiel to be delivered to the NPSL project area.

"*Reliable supply store*" means a recognized source or common stock point for the particular materiel involved.

"*Shore base facilities*" means onshore facilities necessary for NPSL operations, including:

(1) Shore base support facilities, *e.g.*, a receiving and trans-shipment point for materiel, staging area for shuttling

personnel to and from the NPSL tract, a communication, scheduling, and dispatching center; and

(2) Shore base production facilities, e.g., pumps, separating facilities, gas plants, and tankage for production from the NPSL tract.

"*Technical employees*" means those employees having special and specific engineering, geological or other professional skills, and whose primary function in NPSL operations is the handling and resolution of specific operating conditions and problems for the benefit of NPSL operations.

"*Tract*" means land located on the OCS that is offered for lease through an OCS lease sale and that is identified by a leasing map or an official protraction diagram prepared by DOI.

[45 FR 36800, May 30, 1980, as amended at 46 FR 29689, June 2, 1981. Redesignated and amended at 48 FR 1182, Jan. 11, 1983. Redesignated at 48 FR 35642, Aug. 5, 1983]

### § 220.010 NPSL capital account.

(a) For each NPSL tract, an NPSL capital account shall be established and maintained by the lessee for NPSL operations. The NPSL capital account shall include debit entries for all allowable direct and allocable joint costs incurred during the term of the lease, appropriate overhead allowances permitted on these costs pursuant to § 220.012, and allowances for capital recovery calculated pursuant to § 220.020. The NPSL capital account shall be credited with production revenues attributable to the NPSL and any other credits arising from NPSL activities.

(b) The NPSL capital account shall be kept on an accrual basis.

### § 220.011 Schedule of allowable direct and allocable joint costs and credits.

The costs and credits specified in paragraphs (a) through (p) of this section may be charged direct, or allocated to NPSL operations, as appropriate, in accordance with § 220.014.

(a) *Lease rental.* The rent paid by the lessee for the NPSL tract is allowable.

(b) *Labor.* (1)(i) Salaries and wages of lessee's field employees, first level supervisors and technical employees employed in the NPSL project area in NPSL operations are allowable if such costs are not charged under paragraph (g) of this section.

(ii) Salaries and wages of technical employees within technical branches of the lessee's organization who are either temporarily or permanently assigned to, and directly employed in NPSL operations are allowable provided that such employees work "full time" on some particular aspect of NPSL operations or some specific technical problem. Excluded from this category are employees assigned a role in NPSL operations as a duty collateral with other duties that do not directly benefit NPSL operations.

(iii) Salaries and wages of technical employees within technical branches of the lessee's organization who are assigned technical tasks directly related to NPSL operations may be allowable. Costs may be charged to the NPSL if supported by adequate time records showing the nature of the task and the hours spent on that task.

(2) Lessee's cost of allowed employee absence paid to employees whose salaries and wages are chargeable to NPSL operations under paragraphs (b)(1)(i) and (ii) of this section are allowable.

(3) Expenditures or contributions made pursuant to assessments imposed by governmental authority that are applicable to lessee's costs chargeable to NPSL operations under paragraphs (b)(1)(i) and (ii) and (b)(2) of this section are allowable.

(4) Reasonable personal expenses, including allowable relocation costs of employees whose salaries and wages are chargeable to NPSL operations under paragraphs (b)(1)(i) and (ii) of this section and that are paid by the lessee or for which the employees are reimbursed under the lessee's normal practice are allowable except as limited by § 220.013(g).

(i) Allowable relocation costs include:

(A) Travel expenses, including transportation, lodging, subsistence, and reasonable incidental expenses of the employee and members of his immediate family and transportation of his household and personal effects to the new location.

(B) Other necessary and reasonable expenses normally incident to relocation, such as costs of cancelling an unexpired lease, disconnecting and reinstalling household applicances, and purchases of insurance against damages to or loss of personal property are allowable. Costs of cancelling an unexpired lease shall not exceed three times the monthly rental.

(C) Closing costs (i.e. brokerage fees, legal fees, appraisal fees, etc.) for the sale of the employee's actual residence when notified of the transfer are allowable; and

(D) Continuing costs of ownership of the vacant former actual residence being sold, such as continuing mortgage principal and interest payments, maintenance of building and grounds (exclusive of fixing-up expenses), utilities, taxes, property insurance, etc., after settlement date of lease or date of new permanent residence are allowable.

(ii) The combined total of costs listed in paragraphs (b)(4)(i) (C) through (D) of this section shall not exceed 8 percent of the sales price of the property sold.

(iii) Section 220.013(g) specifies employee relocation expenses that are not allowable as a charge to NPSL operations.

(5) Lessee's current costs of established plans for employee's group life insurance, hospitalization, pension, retirement, stock purchase, thrift, bonds, and other benefit plans of a like nature that are made available to all of lessee's employees on an equitable basis, applicable to lessee's labor cost chargeable to NPSL operations under paragraphs (b)(1) (i) and (ii) and (b)(2) of this section, are allowable. The amount of these charges shall be lessee's actual cost not to exceed 23 percent of the total charges under paragraphs (b)(1) (i) and (ii) and (b)(2) except that the Director may from time to time establish a different maximum percentage.

(6) Charges for expenses incurred under paragraphs (b)(2) through (b)(5) of this section may be made to NPSL accounts on a "when and as paid" basis or by a percentage assessment method. If the percentage assessment method is used, it shall be based upon the lessee's actual cost experience expressed as a percentage of costs chargeable under paragraphs (b)(1) (i) and (ii) and (b)(2) of this section. Under either method the lessee's own cost of administering the plans and paying the salaries and benefits defined in this paragraph shall be excluded. In determining actual cost experience of an employee benefit plan, any dividend or refunds received that are applicable to insurance or annuity policies shall be used to reduce the cost of such policies.

(c) *Materiel.* (1) Materiel purchased or furnish by a lessee as NPSL property shall be charged or credited at amounts specified in § 220.015. The purchase and inventorying of materiel is subject to the conditions and provisions in § 220.032.

(2) Charges to an NPSL account shall be made only for such materiel purchased or furnished as NPSL property as is reasonably practical and consistent with efficient and economical operations. The accumulation of surplus stocks shall be avoided.

(3) Credit for salvaged or returned materiel shall be made to the NPSL capital account. When the amount originally charged qualifies for the allowance for capital recovery in § 220.020, the credit shall be calculated pursuant to § 220.021(a)(3).

(d) *Transportation.* Transportation of employees and materiel necessary for NPSL operations to, from, and within the NPSL project area, are allowable, but subject to the following limitations:

(1) If materiel is moved to the NPSL project area, no charge shall be made to NPSL operations for a distance greater than the distance from the nearest reliable supply store, recognized barge terminal, or railway receiving point where like materiel is normally available, unless agreed to by the Director.

(2) If surplus materiel is moved from the NPSL project area, no charge shall be made to NPSL operations for a distance greater than the distance to the nearest reliable supply store, recognized barge terminal, or railway receiving point unless agreed to by the Director. No charge shall be made to NPSL operations for moving materiel to other properties owned by or under

the control of a lessee, unless agreed to by the Director.

(3) In the application of paragraphs (d)(1) and (d)(2) of this section, there shall be no equalization of actual gross trucking costs of $200 or less, excluding accessorial charges.

(e) *Contract services.* Except when excluded by paragraph (f) of this section and/or § 220.013(c), the cost of services and utilities provided under contract by outside parties to the lessee and which constitute proper and necessary NPSL operations or support for NPSL operations, and rental charges paid to outside parties for the use of equipment used in the NPSL project area in support of NPSL operations, may be charged to NPSL operations subject to the following conditions and limitations:

(1) Contract services (including professional consulting services and contract services of technical personnel) that are entirely performed in the NPSL project area and benefit exclusively NPSL operations may be charged at the rates specified in the contract.

(2) Contract services (including professional consulting services and contract services of technical personnel) that are entirely performed in the NPSL project area and benefit the NPSL operations and operations on other tracts must be allocated among all tracts benefited and only that portion representing services benefiting the NPSL tract charged to NPSL operations.

(3) Contract services (including professional consulting services and contract services of technical personnel) that are performed at sites outside the NPSL project area may be charged to NPSL operations only if:

(i) The contracted services charged to the NPSL operations benefit only the NPSL tract or support NPSL operations;

(ii) The contract under which such services are provided deals exclusively with services benefiting the NPSL tract or NPSL operations, or the costs of the contract services which are applicable to the NPSL tract or NPSL operations are separately and specifically identified in the contract; and

(iii) Services specified in the contract relate to the resolution of specific technical problems confronting NPSL operations, or specific engineering design problems related to equipment or facilities required for NPSL operations.

(4) The cost of any contract service related to research and development is specifically excluded, as are contract services calling for feasibility studies not directly related to specific engineering design problems or alternatives for equipment and facilities required by NPSL operations.

(f) *Legal expenses.* Expense of handling, investigating and settling litigation or claims, discharging of liens, payments of judgments and amounts paid for settlement of claims incurred in or resulting from NPSL operations, or necessary to protect or recover the NPSL property are allowable, except those costs listed in § 220.013(f) as unallowable. This includes the salaries and wages of lessee's legal staff and the expense of outside attorneys who are assigned to matters described in this paragraph if supported by adequate time records showing the nature of the matter, its direct relationship to NPSL operations, and the hours spent on the matter.

(g) *Rental of equipment and facilities furnished by lessee.* (1)(i) The NPSL capital account shall be charged for the use of equipment and facilities owned by a lessee that are proper and necessary for NPSL operations, including shore base and offshore facilities and pipelines from the tract to shore base production facilities, and that are not NPSL property. Rental charges shall be made at rates based upon actual costs of acquisition, construction, and operation. Such rates may include labor, the cost of setting up and dismantling equipment, maintenance, repairs, other operating expenses, insurance, taxes, depreciation (calculated using a method consistent with generally accepted accounting principles, consistently applied) and a return on the remaining undepreciated basis not to exceed 8 percent per year, except that the Director may from time to time establish a different maximum percentage. Any cost of acquiring real property in excess of that reasonably required to support the facilities furnished for NPSL operations shall not be included in the costs used to establish these rates. Rates charged shall not exceed average commercial rates for equipment and facilities of similar nature and capability currently prevailing in the vicinity of the NPSL project area.

(ii) The term "equipment and facilities" is used in the broad sense to include equipment that may be mobile or semimobile and also installations that may be semipermanent or permanent in nature. Such equipment and facilities listed below shall be charged on the basis indicated.

| Equipment/facilities | Basis of charge |
|---|---|
| A Mobile equipment | |
| Aircraft | Hour |
| Automobiles | Mile or hour |
| Trucks | Mile or hour |
| Tractors | Hour |
| Bulldozers | Hour |
| Mobile cranes | Hour |
| Trailer mounted test separators | Hour |
| Truck mounted cement mixers | Hour |
| Boats | Day or hour |
| House trailers | Day |
| B Semimobile equipment | |
| Drill rigs | Foot or day |
| Workover rigs | Hour |
| Pulling units | Hour |
| Derricks | Day |
| Drilling tender | Day |
| Barges | Day |
| C Semipermanent installations | |
| Skid mounted separators | Day or volume |
| Skid mounted compressors | Day or volume |
| D Permanent installations | |
| Compressor stations | Volume |
| Saltwater disposal wells | Volume or wells |
| Source water wells and supply systems | Volume |
| Roads | Wells |
| Production/drilling platform | Volume or wells |
| Canals | Wells |
| Dock | Wells |
| Oil storage and loading facilities | Volume |
| Gathering systems and pipeline | Volume |
| ACT systems | Volume |
| Laboratory services (excluding research work) | Hour or unit |
| Shore base production facilities | Volume |
| Shore base support facilities | Wells |
| E Miscellaneous | |
| Drill pipe | Foot or day |
| Casing setting tools | Day |
| Well testing equipment | Day |

Equipment and facilities that are not listed shall be charged on a basis consistent with the nature of the use.

(2) In lieu of charges in paragraph (g)(1) of this section, the lessee may elect to use average commercial rates prevailing in the vicinity of the NPSL project area less 20 percent. For automotive equipment, the lessee may elect to use rates established by the Director. For other equipment for which no commercial rate exists, the lessee shall submit the basis for determining such costs to the Director for approval.

(h) *Damages and losses to NPSL property.* All costs necessary for the repair or replacement of NPSL property made necessary because of damages or losses incurred by fire, flood, storm, theft, accident, or other causes not covered by insurance, except those resulting from lessee's negligence or willful misconduct may be charged to the NPSL capital account. Any settlement received from an insurance carrier should be credited to NPSL operations when received.

(i) *Taxes.* All taxes, except income taxes, profit share payments, and taxes based upon income, that are assessed or levied upon or in connection with NPSL operations and which have been paid by the lessee are allowable. Allowed taxes shall include, but not be limited to, production, severance, excise, ad valorem, and mineral taxes.

(j) *Insurance.* (1) Net premiums paid for insurance required to be carried for NPSL operations are allowable. For NPSL operations in which the lessee may act as self-insurer for Workmen's Compensation and Employer's Liability, the lessee may include the risk under its self-insurance program in providing coverage under State and Federal laws and charge NPSL operations at lessee's cost not to exceed manual rates.

(2) NPSL operations shall be credited for all reimbursements for costs of damage to NPSL property or personal injury. Reimbursements for damaged NPSL property shall be credited as follows:

(i) If the damaged NPSL property is replaced or repaired, to the NPSL capital account charged for the cost of replacement or repair; or

(ii) If the damaged NPSL property is not replaced or repaired, to the NPSL capital account except that if the cost of the property originally qualified for the allowance for capital recovery in

§ 220.020, the credit shall be calculated pursuant to § 220.021(a)(3).

(k) *Communications.* Costs of leasing, acquiring, installing, operating, repairing and maintaining communication systems, including radio, microwave facilities, and computer production controls for the NPSL operations are allowable. If communication facilities systems serving the NPSL tract serve operations and/or facilities outside the NPSL project area, charges to NPSL operations shall be made as provided in paragraph (g) of this section or shall be allocated to NPSL operations in accordance with § 220.014.

(l) *Ecological and environmental.* Costs incurred in the NPSL project area as a result of statutory regulations for archeological and geophysical surveys relative to identification and protection of cultural resources and other environmental or ecological surveys required by the Bureau of Land Management or other regulatory authority, may be charged to the NPSL capital account. Also, the costs to provide or have available pollution containment and removal equipment, including payments to organizations and/or funds which provide equipment and/or assistance in the event of oil spills or other environmental damage are allowable. The costs of actual control and cleanup of oil spills and resulting responsibilities required by applicable laws and regulations are allowable, except that a charge shall not be allowed for any such costs attributable to the lessee's negligence or willful misconduct.

(m) *Dry or bottom hole contributions.* The costs of dry or bottom hole contributions made to obtain information about the structure or other characteristics of the geology underlying the NPSL tract are allowable.

(n) *Abandonment costs.* Actual costs incurred in the plugging of wells, dismantling of platforms and other facilities and in the restoration of the NPSL project area shall be charged to the NPSL capital account only when incurred (i.e., not on an accrual basis), except that costs incurred after the cessation of production shall not be charged to the NPSL capital account. Abandonment costs in excess of offsetting revenues shall not form the basis of any claim against the United States.

(o) *Other costs.* Any other costs not covered in paragraphs (a)-(n) of this section and not disallowed by § 220.013 that are incurred by the lessee in the necessary and proper conduct of NPSL operation and are approved by the Director, are allowable. Approval of a plan of development and production for the NPSL tract by the Director shall be considered sufficient approval for these other costs provided they are separately identified in said plan of development and production. Such separate identification shall note the nature of these other costs and may include an estimate of their magnitude. Any cost approvals under this paragraph for which the specific amounts have not been itemized are presumed to be approved provided they fall within the limits for a prudent operator. Approval of costs under this paragraph shall be approval solely for the purposes of determining allowable costs and shall not preclude a subsequent adjustment at audit of the amount of such costs.

(p) *Other credits.* Credit shall be given to the NPSL capital account, depending on when it is incurred, for NPSL property leased or used in non-NPSL operations, for the sale of information derived from test wells and G & G, and for any and all amounts earned or otherwise due lessee as a result of NPSL operations.

### § 220.012 Overhead allowance.

(a) During the capital recovery period the overhead allowance shall be calculated on a percentage basis at the rate of 4 percent of allowable direct and allocable joint costs charged to the NPSL capital account, exclusive of costs specified in paragraph (c) of this section. This overhead allowance shall be debited to the NPSL capital account in accordance with § 220.021(b)(2).

(b) For each month after the end of the capital recovery period, an overhead allowance shall be calculated on a percentage basis at the rate of 10 percent of allowable direct and allocable joint costs charged to the NPSL capital account, exclusive of costs specified in paragraph (c) of this section. This overhead allowance shall be debited to the NPSL capital account in accordance with § 220.021(c)(2).

(c) Overhead shall not be charged on the value of:

(1) Lease rental (§ 220.011(a));

(2) Contract services (§ 220.011(e));

(3) Taxes (§ 220.011(i));

(4) Re-injected hydrocarbons, originally produced from the NPSL tract, that are charged under § 220.011(c); and

(5) Credits for materiel charged under § 220.011(c) that are salvaged, returned, or used for the benefit of non-NPSL operations.

### § 220.013 Unallowable costs.

The following costs shall not be charged as direct or joint costs to NPSL operations:

(a) Bonus payments to the United States;

(b) Interest (except as permitted under § 220.011(g));

(c) Depreciation, depletion, amortization, or any other charge for capital recovery for materiel charged to the NPSL capital account under § 220.011(c), except as explicitly provided by the allowance for capital recovery calculated according to § 220.020;

(d) The cost of taking inventory;

(e) Research and development costs;

(f) The following legal expenses:

(1) The costs of litigation against the Federal government;

(2) Fines or penalties levied by any Federal agency;

(3) Settlement of claims or other litigation resulting from the lessee's violation of regulatory requirements or negligence; and

(4) The cost of the lessee's legal staff or expense of outside attorneys, except as explicitly allowed under § 220.011(f);

(g) The following employee relocation costs (whether incurred by the employee or the lessee):

(1) Loss on the sale of a home;

(2) Purchase price of a home in the new location;

(3) Payments for employee income taxes incident to reimbursed relocation costs; and

(4) Any relocation cost in connection with an employee move that is for the primary benefit of the lessee's non-NPSL operations;

(h) The lessee's own cost of administering employee benefit plans;

(i) The cost of acquiring or constructing shore base facilities and real property improvements that are charged to NPSL operations on a rental basis under § 220.011(g);

(j) Rentals on any facilities, the investment costs of which have been charged either directly or as allocable joint costs, to the NPSL capital account; and

(k) Pre-NPSL expenditures.

### § 220.014 Allocation of joint costs and credits.

(a) Joint costs shall be grouped in cost pools for allocation to NPSL and non-NPSL operations in reasonable proportion to the beneficial or causal relationships which exist between a specific cost pool and the operations. That portion of a joint cost pool that may be allocated to NPSL operations is called an allocable joint cost.

(b) The following allocation principles apply in allocating joint costs:

(1) *G & G.* G & G shall be allocated on a line mile per tract basis.

(2) *Wages and salaries.* Wages and salaries that are not charged as direct on the basis of time spent on a particular job shall be allocated on a reasonable and equitable basis.

(3) *Compensated personal absence, payroll taxes and personal expenses.* These items shall be allocated on the same basis as wages and salaries.

(4) *Transportation costs.* Transportation costs for employees that are not charged direct shall be allocated on the same basis as their wages and salaries.

(c) Joint credits shall be allocated in the same manner as joint costs.

(d) When the NPSL is made a part of a unit, the allowed costs shall be charged to the NPSL capital account on the basis specified in the unit operating agreement as approved by the Director. Revenues and other credits shall be made to the NPSL accounts on the same basis as specified in the approved operating agreement. Joint costs of an NPSL and a non-NPSL tract that are adjacent to one another and are on the same structure shall be allocated on a basis approved by the Director.

### § 220.015 Pricing of materiel purchases, transfers, and disposition.

(a)(1) *Purchased materiel.* Except as provided in paragraph (a)(2)(i) of this section, materiel purchased for use in NPSL operations shall be charged to NPSL operations at the price paid, after deduction of any discounts received. Should any purchased materiel be defective or returned to a vendor for other reasons, the credit shall be allocated to NPSL operations when received by the lessee in accordance with § 220.011(c)(3).

(2) *Transferred and disposal materiel.* An item of materiel, which is acquired by the lessee for use in NPSL operations by means other than purchase or disposed of by any means, shall be priced according to this subparagraph:

(i) *Condition A (New) Materiel:* (A) Tubular goods, except line pipe, shall be priced at the current market price in effect on date of movement on a minimum carload or barge load weight basis, regardless of quantity transferred, equalized to the lowest published price "free on board" (f.o.b.) railway receiving point or recognized barge terminal nearest the NPSL tract where such materiel is normally available.

(B) *Line pipe.* (1) Movement of less than 30,000 pounds shall be priced at the current price in effect at date of movement, as listed by a reliable supply store nearest the NPSL tract where such materiel is normally available.

(*2*) Movement of 30,000 pounds or more shall be priced under the provisions for tubular goods pricing in paragraph (a)(2)(i)(A) of this section.

(C) Other materiel shall be priced at the current price in effect at date of movement, as listed by a reliable supply store or f.o.b. railway receiving point nearest the NPSL tract where such materiel is normally available.

(ii) *Condition B (Good Used) Materiel.* Materiel in sound and serviceable condition and suitable for reuse without reconditioning:

(A) Materiel transferred to the NPSL project area shall be priced at 75 percent of current Condition A price.

(B) Materiel transferred from the NPSL project area shall be priced:

(*1*) At 75 percent of current Condition A price, if the materiel was originally charged to NPSL operations as Condition A materiel, or

(*2*) At 65 percent of current Condition A price, if the materiel was originally charged to NPSL operations as Condition B materiel at 75 percent of current Condition A price.

(iii) *Conditions C and D (Other Used) Materiel*—(A) *Condition C.* Materiel that is not in sound and serviceable condition and not suitable for its original function until after reconditioning shall be priced at 50 percent of current Condition A price.

(B) *Condition D.* Materiel no longer suitable for its original purposes but suitable for some other purpose shall be priced on a basis commensurate with its use and comparable with that of materiel normally used for such other purpose. If the materiel has no alternative use it should be priced at prevailing prices as scrap.

(iv) *Obsolete Materiel.* Materiel that is serviceable and usable for its original function and has a vlaue less than Condition A, B, or C materiel may be valued at a price agreed to by the Director. Such price should be the equivalent of the value of the service rendered by such materiel.

(b) *Pricing conditions.* (1) Loading and unloading costs shall be charged at a rate of 15 cents per hundred weight, or such other rate as may be set by the Director, on all tubular goods movements, in lieu of loading/unloading costs sustained, when the actual hauling costs of such tubular goods is equalized under provisions of § 220.011(d).

(2) Materiel involving erection costs shall be charged at the applicable percentage of the current knocked-down price of new materiel.

(c) When materiel subject to paragraphs (a)(2) (ii) and (iii) of this section is transferred, the cost of reconditioning shall be borne by the receiving party.

### § 220.020 Calculation of the allowance for capital recovery.

(a) For purposes of this section, the cost base for the allowance for capital recovery in a particular month shall consist of the sum of:

(1) All allowable direct and allocable joint costs chargeable to the NPSL capital account during the month less any costs specified in § 220.012(c); plus

(2) The value of contract services chargeable to the NPSL capital account during the month pursuant to § 220.011(e); plus

(3) The capital recovery period overhead allowance, calculated in accordance with § 220.012(a), that is chargeable to the NPSL capital account for the month; less

(4) Production revenues and other credits received during the month.

(b) If the cost base for a month is greater than zero (that is, if the sum of the charges specified in paragraphs (a) (1) through (3) of this section exceeds the value of production revenues and other credits), the allowance for capital recovery shall be calculated by multiplying the cost base by the capital recovery factor, and shall be debited to the NPSL capital account as specified in § 220.021(b).

(c) If the cost base for a month is less than zero, the allowance for capital recovery for the NPSL capital account shall be calculated by multiplying the resulting negative cost base by the capital recovery factor. The negative product of this calculation shall be debited to the NPSL capital account as specified in § 220.021(b).

(d) No allowance for capital recovery shall be calculated on the charges or credits related to any time period after the end of the capital recovery period.

### § 220.021 Determination of net profit share base.

(a) During each month of the lease term, the NPSL capital account shall be:

(1) Debited with allowable direct and allocable joint costs;

(2) Credited with an amount reflecting the production revenues for the month, calculated in accordance with § 220.110(b) of this chapter;

(3) Credited with amounts properly credited back to the NPSL capital account as specified in § 220.011(p). Credits associated with charges to the NPSL capital account during the capital recovery period, however, shall first be increased by the value of the credit multiplied by the recovery factor, before crediting that sum to the NPSL capital account.

(b) At the end of each month of the lease term during the capital recovery period:

(1) The transactions specified in paragraph (a) of this section shall be made to the NPSL capital account.

(2) The capital recovery period overhead allowance shall be calculated in accordance with § 220.012(a) and debited to the NPSL capital account.

(3) The allowance for capital recovery shall be calculated in accordance with § 220.020 and the allowance debited (or the negative allowance debited, as appropriate) to the NPSL capital account. (A debit entry of a negative allowance for capital recovery shall have the same effect as a credit entry of the absolute value of the allowance for capital recovery.)

(4) The balance in the NPSL capital account shall be calculated. If, as a result of the accounting transactions described in paragraphs (b) (1) through (3) of this section, there is a credit balance in the NPSL capital account, the capital recovery period will be considered terminated as of this month. The credit balance will be forwarded to the next month, which will be the first month for which a profit share payment is due.

(c) At the end of each month of the lease term following the end of the capital recovery period:

(1) The transaction specified in paragraph (a) of this section shall be made to the NPSL capital account.

(2) An overhead allowance shall be calculated in accordance with § 220.012(b) and debited to the NPSL capital account.

(3) The balance in the NPSL capital account shall be calculated.

(d) If, as a result of the accounting transactions described in paragraph (c) of this section, there is a credit balance in the NPSL capital account, this credit balance is the net profit share base for that month. The opening debit and credit balances in the NPSL capital account for any month following a month in which there is a credit balance in the NPSL capital account (except as provided in paragraph (b)(4)) of this section shall be zero.

(e) If, as a result of the accounting transactions described in paragraph (b) or (c) of this section, there is a debit balance in the NPSL capital account, this debit balance shall be the opening debit balance in the NPSL capital account for the following month.

(f) Any credit balance in the NPSL capital account shall become the net profit share base as described in this section. Any debit balance in the NPSL capital account shall be maintained only insofar as necessary for the determination of profit share payments. Such debit balance shall not represent a claim against the United States.

### § 220.022 Calculation of net profit share payment.

The net profit share payment shall be calculated by multiplying the net profit share base calculated in accordance with § 220.021 by the net profit share rate. The net profit share payment shall be paid to the United States in accordance with § 220.031.

### § 220.030 Maintenance of records.

(a) Each lessee subject to this Part 220 shall establish and maintain such records as are necessary to determine for each NPSL:

(1) The volume and disposition of all oil and gas production saved, removed or sold for each month;

(2) The value of all oil and gas production saved, removed or sold for each month;

(3) The amount and description of costs and credits to the NPSL capital account;

(4) The amount and description of all costs of acquisition, construction, and operation of equipment and facilities furnished by the lessee and charged to the NPSL capital account under § 220.011(g). Such records shall include worksheets or other documents that indicate the method used to calculate the amount of each charge made under § 220.011(g);

(5) The cumulative balance of costs and credits to the NPSL capital account; and

(6) The inventory of materiel.

(b) The ledger cards showing the charges and credits to the NPSL capital account shall be maintained until thirty-six months after the cessation of NPSL operations by the lessee. All other documents, journals and records shall be maintained for thirty-six months from the due date or date of mailing of the statement of account on an NPSL, whichever comes later, except that nothing in these regulations shall limit the time of investigation or the need to produce records when prima facie evidence of fraud or willful misconduct is obtained with respect to the government's interest in the NPSL.

### § 220.031 Reporting and payment requirements.

(a) Each lessee subject to this part shall file an annual report during the period from issuance of the NPSL until the first month in which production revenues are credited to the NPSL capital account. Such report shall list the costs incurred, including allowances applied, credits received, and the balance of the NPSL capital account. Not later than 60 days after the end of the first month in which production revenues are credited to the NPSL capital account, a final report relating to the period shall be filed.

(b) Beginning with the first month in which production revenues are credited to the NPSL capital account, each lessee subject to this Part 220 shall file a report for each NPSL, not later than 60 days following the end of each month, containing the following information for the month for which the report is filed:

(1) The volume and disposition of all oil and gas production saved, removed or sold;

(2) The production revenue;

(3) The amount and description of all costs and credits to the NPSL capital account;

(4) The balance of the NPSL capital account; and

(5) The net profit share base and net profit share payment due the United States and the monthly profit share of the lessee.

(c) Each lessee subject to this Part 220 shall submit, together with the report required by paragraph (b) of this section, any net profit share payment due the United States for the period covered by the report.

(d) Each lessee subject to this Part 220 shall file a report not later than 90 days after each inventory is taken, reporting the controllable materiel on hand, acquired, transferred or used.

(e) Each lessee subject to this Part 220 shall file a final report, not later than 60 days following the cessation of production, together with the appropriate net profit share payment, indicating the remaining balance and costs and credits to the NPSL capital account for the period.

(f) Reports required by this section shall be filed with the Director, either separately or as part of the reports that are currently filed.

(g) Interest shall be calculated at the prevailing rate or rates as published in the Bulletin to the Department of the Treasury Fiscal Requirement Manual, in effect for the period or periods over which the net profit share payment is owed, compounded monthly, on the amount of a net profit share payment, from the due date (60 days following the end of each month for which the payment was due) of a net profit share payment until such payment is received by the United States.

### § 220.032 Inventories.

(a) The lessee is responsible for NPSL materiel and shall make proper and timely cost and credit notations for all materiel movements affecting NPSL property. The lessee shall provide only such materiel as may be required for immediate use or is consistent with practical, efficient, and economical operations. The accumulation of surplus stocks shall be avoided by proper materiel control, inventory and purchasing. The lessee shall make timely disposition of idle and surplus materiel through sale.

(b) At reasonable intervals, but at least once every three years, inventories of controllable materiel shall be taken by the lessee. Written notice of intention to take inventory shall be given by the lessee at least 30 days before any inventory is to be taken so that the Director may be represented at the taking of inventory. Failure of the Director to be represented at an inventory shall bind the Director to accept the inventory taken by the lessee, except in the case of willful misrepresentation or fraud.

(c) Inventory shall be valued with any generally accepted accounting method used by the lessee to value the same materiel for financial or income tax reporting purposes, provided that the method is consistently applied throughout the life of the materiel.

(d) Reconciliation shall be made of a physical inventory with the NPSL capital account by the lessee, and a list of overages and shortages shall be available to the Director for audit as provided in § 220.033. Inventory adjustments of controllable materiel shall be made by the lessee to the NPSL capital account for overages and shortages. Controllable materiel removed from physical inventory that has not been credited to NPSL operations under § 220.015(a)(2) shall be credited to NPSL operations at its original value, except that when the cost of the materiel originally qualified for the allowance for capital recovery in § 220.020, the credit shall be calculated pursuant to § 220.021(a)(3).

### § 220.033 Audits.

(a) The accounts of an NPSL lessee or of a contractor of the lessee which are related to NPSL operations shall be subject to audit by DOI or its appointed agent. Where possible, the auditor for DOI shall coordinate audit efforts with other nonoperators, if any. DOI shall have the right to initiate an audit any time within thirty-six months of the due date of the monthly statement that is to be audited or the date that the statement was mailed, whichever is later, provided, however, that audits may not be conducted any more frequently than once every year except upon a showing of fraud or willful misrepresentation.

(b)(1) When nonoperators of an NPSL lease call an audit in accordance with the terms of their operating agreement, the Director shall be notified of the audit call in the same manner as the operator is notified. DOI may elect to send an auditor with the audit team specified by the nonoperators in lieu of calling for a separate audit by DOI.

(2) If DOI determines to call for an audit, DOI shall notify the lessee of its audit call and set a time and place for the audit. Such a notice shall be sent at least thirty days before the suggested time for the audit to allow the nonoperators to join in DOI's audit in lieu of calling for their own audit. The place for the audit will normally be the place where the lessee maintains its records pertaining to the NPSL lease. The lessee shall send copies of the notice to the nonoperators on the lease. The lessee shall use reasonable effort to notify all nonoperators, but failure to include one or more nonoperators in the notification shall not void the notice.

(3) When DOI calls for an audit, DOI may suggest the date and time when the audit may commence. The estimated duration of the audit may be mentioned to the lessee as well as to the other nonoperators who may elect to supply and auditor for their own audit purposes. The lessee's office where the audit will be held may be named or, if not known, inquired about. If a visit to a field plant or field office is contemplated by the government auditor, such a field trip may be mentioned. If DOI expresses a desire to review a period on which the thirty-six month time limitation has expired, it is the lessee's prerogative to allow the review or to request that DOI adhere to the time limitation specified in these regulations.

(c)(1) Exceptions to the accounting by the lessee, whether in favor of the government or the lessee, shall be noted in a report to the lessee. The lessee shall have 60 days from the mailing of a notice of exceptions to agree to the adjustments proposed by the DOI auditor or to object to the proposed adjustments. If the lessee accepts the proposed adjustments, the adjustment shall be booked in the month in which the lessee agrees to the adjustment, except where such adjustment would have resulted in a change in any net profit share payment due the United States. In such a case, there shall be a redetermination of the NPSL capital account pursuant to § 220.034.

(2) If the lessee disagrees with the adjustment, the lessee shall have the right to appeal the adjustment to the Director.

(d) Upon receipt of an agreement by the government auditor that there are no required audit adjustments, upon final determination with respect to any audit adjustment proposed by the government auditor, or upon the lapse of thirty-six months from the due date or date of mailing of the statement of account on an NPSL lease, whichever comes later, the books shall be closed for audit adjustment purposes, except upon a showing of fraud or willful misrepresentation.

(e) Records required to be kept under § 220.030(a) shall be made available for inspection by any authorized agent of DOI at any time during normal business hours upon the request of the Director or other authorized official.

### § 220.034 Redetermination and appeals.

(a) If, as a result of an inspection of records or an audit under § 220.033, the Director determines that there is an error in the NPSL capital account or an error in calculating the net profit share payment, whether in favor of the government or the lessee, the Director shall redetermine the net profit share base and recalculate the net profit share payment due the United States and notify the lessee of the recalculation.

(b) The lessee shall pay any additional amount of net profit share payment owed plus interest, compounded monthly, from the date that the payment was due until the date it is actually paid. Interest shall be calculated at the prevailing rate or rates as published in the Bulletin to the Department of the Treasury Fiscal Requirements Manual, in effect for the period or periods over which the payment is owed.

(c) If the recalculated profit share payment is less than the amount paid the United States, the lessee shall apply such overpayment to the next profit share payment.

(d) Within 30 days after receiving notice of the recalculation as provided in paragraph (a) of this section, the lessee may appeal the decision of the Director in accordance with the appeals provision of 30 CFR Part 290.

# PART 228—COOPERATIVE ACTIVITIES WITH STATES AND INDIAN TRIBES

### Subpart A—General Provisions

Sec.
228.1 Purpose.
228.2 Policy.
228.4 Authority.
228.5 Delegation of authority.
228.6 Definitions.
228.10 Information collection requirements.

### Subpart B—Oil and Gas, General—[Reserved]

### Subpart C—Oil and Gas, Onshore

228.100 Entering into an agreement.
228.101 Terms of agreement.
228.102 Establishment of standards.
228.103 Maintenance of records.
228.104 Availability of information.
228.105 Funding of cooperative agreements.
228.107 Eligible cost of activities.
228.108 Deduction of civil penalties accruing to the State or tribe from the Federal share of a cooperative agreement.

AUTHORITY: Federal Oil and Gas Royalty Management Act of 1982 (30 U.S.C. 1701 *et seq.*).

SOURCE: 49 FR 37348, Sept. 21, 1984, unless otherwise noted.

## Subpart A—General Provisions

### § 228.1 Purpose.

It is the purpose of cooperative agreements to effectively utilize the capabilities of the States and Indian tribes in developing and maintaining an efficient and effective Federal royalty management system as indicated at 30 U.S.C. 1701.

### § 228.2 Policy.

It shall be the policy of DOI to enter into cooperative agreements with States and Indian tribes to carry out audits and related investigations and enforcement actions whenever a State or tribe initiates a request to enter into an agreement and a finding is made that a State or tribe has the ability to carry out cooperative activities in a timely and efficient manner.

### § 228.4 Authority.

The Secretary of the Interior is authorized to enter into cooperative agreements with States and Indian tribes (30 U.S.C. 1732) to share oil or gas royalty management information, and to carry out auditing and related investigation or enforcement activities in cooperation with the Secretary.

### § 228.5 Delegation of authority.

(a) Authority to enter into cooperative agreements to carry out audit and related investigation and enforcement activities with State and tribal governments has been delegated to the Director of the Minerals Management Service (MMS).

(b) Authority to enter into cooperative agreements with State and tribal governments to carry out inspection and related investigation and enforcement activities has been delegated to the Director of the Bureau of Land Management (BLM) and is not covered by this part.

(c) The entry into a cooperative agreement with either MMS or BLM will not affect the ability of a State or Indian tribe to choose to enter into such an agreement with the other agency. A State may enter into a delegation agreement (30 U.S.C. 1735) with MMS to perform certain functions without affecting its ability to enter into a cooperative agreement with either MMS or BLM, or both, to cooperate in the performance of those functions which are not delegated in this part.

### § 228.6 Definitions.

For the purposes of this part, terms shall have the same meaning as in 30 U.S.C. 1702. In addition, the following definition shall apply:

*Audit* means an examination of the financial accounting and lease related records of the lessee and other interest holders, who by lease or contract pay royalties or are obligated to pay royalties, rents, bonuses or other payments on Federal or Indian leases. An examination is to be conducted in accordance with generally accepted audit standards as adopted by the American Institute of Certified Public Accountants. Activities to be examined which are considered to be an audit function include reconciliation of lease accounts under the Royalty Accounting System; records of lease activities related to Federal leases located within the boundaries of the State entering into a cooperative agreement; records of lease activities related to leases located on Indian lands, and the review and resolution of exceptions processed by the Auditing and Financial System and the Production Accounting and Auditing System, the official accounting systems for royalty reporters and payors maintained by the MMS.

**§ 228.10 Information collection requirements.**

The information collection requirements contained in this part do not require approval by the Office of Management and Budget under 44 U.S.C. 3501 *et seq.*, because there are fewer than ten respondents annually.

## Subpart B—Oil and Gas, General—[Reserved]

## Subpart C—Oil and Gas, Onshore

**§ 228.100 Entering into an agreement.**

(a) A State or Indian tribe may request the Department to enter into a cooperative agreement by sending a letter from the governor, tribal chairman, or other appropriate official with delegation authority, to the Director of MMS.

(b) The request for an agreement shall be in a format prescribed by MMS and should include at a minimum the following information:

(1) Type of eligible activities to be undertaken.

(2) Proposed term of the agreement.

(3) Evidence that the State or Indian tribe meets, or can meet by the time the agreement is in effect, the standards established by the Secretary for the types of activities to be conducted under the terms of the agreement.

(4) If the State is proposing to undertake activities on Indian lands located within the State, a resolution from the appropriate tribal council indicating their agreement to delegate to the State responsibilities under the terms of the cooperative agreement for activities to be conducted on tribal or allotted land.

**§ 228.101 Terms of agreement.**

(a) Agreements entered into under this part shall be valid for a period of 3 years and shall be renewable for additional consecutive 3-year periods upon request of the State or Indian tribe which is a party to the agreement.

(b) An agreement may be terminated at any time by mutual agreement and upon any terms and conditions as agreed upon by the parties.

(c) A State or Indian tribe may unilaterally terminate an agreement by giving a 120-day written notice of intent to terminate.

(d) The MMS may commence termination of an agreement by giving a 120-day written notice of intent to terminate. MMS shall provide the State or Indian tribe with the reasons for the proposed termination in writing if the termination is proposed because of alleged deficiencies by the State or Indian tribe in carrying out the provisions of the agreement. The State or Indian tribe will be given 60 days to respond to the notice of deficiencies and to provide a plan for correction of those deficiencies. No final action on termination shall be taken until any submission of the State or Indian tribe provided within the above prescribed 60 days has been reviewed by MMS for content or merit.

(e) Termination of a cooperative agreement shall not bar a later request by a State or Indian tribe to enter into a subsequent cooperative agreement.

### § 228.102 Establishment of standards.

The MMS, after consultation with States and Indian tribes, shall establish standards for carrying out the activities under the provisions of this part. The standards will be incorporated into the agreement and shall be no more stringent than those applicable to similar activities of the MMS. The States and Indian tribes shall coordinate their planned auditing activities with MMS. Where an MMS audit team is permanently assigned to a lessee/payor, contact by State and Indian tribal auditors with the lessee/payor shall be through the MMS auditor in residence.

### § 228.103 Maintenance of records.

The State or Indian tribe entering into a cooperative agreement under this part must retain all records, reports, working papers, and any backup matrials for a period specified by MMS. All records and support materials must be available for inspection and review by appropriate personnel of DOI including the Office of the Inspector General.

### § 228.104 Availability of information.

(a) Under the provisions of this part, information necessary to carry out the activities authorized under the terms of a cooperative agreement will be provided by DOI to the States and Indian tribes entering into such agreements. The information will consist of data provided from all relevant sources on a lease level basis for leases located within the boundaries of the State or Indian tribe which has entered into the agreement. This information will include any records or data held by the lessee or other person that have not been submitted to MMS, but that affect Federal lease interests and could be required to be submitted under the lease terms or Federal regulations.

(b) None of the provisions of this subpart should be construed as limiting information already being provided to Indian tribes and allottees regarding their lease interests.

(c) Information will be provided by MMS on a monthly basis and will include data on royalties, rents, and bonuses collected on the lease, volumes produced, sales made, value of products disposed of as a sale and used as a basis for royalty calculation, and other information necessary to allow the State or tribe to carry out its responsibilities under the cooperative agreement.

(d) Proprietary data that is made available to a State or tribe under provisions of 30 U.S.C. 1733 shall be subject to the constraints of 18 U.S.C. 1905. To receive proprietary data, the State or tribe must—

(1) Demonstrate what audit, investigation, or litigation under provisions of 30 U.S.C. 1734 is planned for or underway for which this data is essential;

(2) Demonstrate why this particular data is necessary; and

(3) Agree to safeguard proprietary data as provided.

### § 228.105 Funding of cooperative agreements.

(a) The Federal share of funding eligible activities under a cooperative agreement will be limited to not more than 50 percent share of the cost of eligible activities under the terms of the cooperative agreement. The State or tribe may provide its 50 percent share either in cash or in kind. In kind contributions must be found eligible under the terms of the agreement and are subject to examination and evaluation by the Department.

(b) All cooperative agreements under this part are subject to annual funding and the availability of appropriations specifically designated for the purpose of this part.

### § 228.107 Eligible cost of activities.

(a) Only costs directly associated with eligible activities undertaken by the State or Indian Tribe under the terms of a cooperative agreement will be eligible for sharing. Costs of services or activities which cannot be directly related to the support of the cooperative agreement will not be eligible for Federal funding or for inclusion in the State's 50 percent share or in the Indian Tribe's share.

(b) Eligible costs are the cost of salaries and benefits associated with technical, support, and clerical personnel engaged in eligible activities; direct cost of travel, rentals, and other normal administrative activities in direct support of the project or projects; basic and specialized training for State and tribal participants; and cost of any contractual services which can be shown to be in direct support of the activities covered by the agreement. Each cooperative agreement shall contain detailed schedules identifying those activities and costs which qualify for funding and the procedures, timing, and mechanics for implementing Federal funding.

**§ 228.108 Deduction of civil penalties accruing to the State or tribe from the Federal share of a cooperative agreement.**

As provided at 30 U.S.C. 1736, 50 percent of any civil penalty collected as a result of activities under a cooperative agreement will be shared with the State or Indian tribe performing the cooperative agreement; however, the amount of the civil penalty shared will be deducted from any Federal funding owed under that cooperative agreement. MMS shall maintain records of civil penalties collected and distributed to the States and tribes involved in cooperative agreements. Each quarterly payment of the Federal share of a cooperative agreement will be reduced by the amount of the civil penalties paid to the State or tribe during the prior quarter.

## PART 229—DELEGATION TO STATES

### Subpart A—General Provisions

Sec.
229.1 Purpose.
229.2 Policy.
229.4 Authority.
229.6 Definitions.
229.10 Information collection requirements.

### Subpart B—Oil and Gas, General—[Reserved]

### Subpart C—Oil and Gas, Onshore

ADMINISTRATION OF DELEGATIONS

229.100 Authorities and responsibilities subject to delegation.
229.101 Petition for delegation.
229.102 Fact-finding and hearings.

Sec.
229.103 Duration of delegations; termination of delegations.
229.104 Terms of delegation of authority.
229.105 Evidence of Indian agreement to delegation.
229.106 Withdrawal of Indian lands from delegated authority.
229.107 Disbursement of revenues.
229.108 Deduction of civil penalties accruing to the State or tribe under the delegation of authority.
229.109 Reimbursement for costs incurred by a State under the delegation of authority.
229.110 Examination of the State activities under delegation.
229.111 Materials furnished to States necessary to perform delegation.

DELEGATION REQUIREMENTS

229.120 Obtaining regulatory and policy guidance.
229.121 Recordkeeping requirements.
229.122 Coordination of audit activities.
229.123 Standards for audit activities.
229.124 Documentation standards.
229.125 Preparation and issuance of enforcement documents.
229.126 Appeals.
229.127 Reports from States.

## Subpart A—General Provisions

AUTHORITY: The Federal Oil and Gas Royalty Management Act of 1982 (30 U.S.C. 1701 *et seq.*).

SOURCE: 49 FR 37350, Sept. 21, 1984, unless otherwise noted.

**§ 229.1 Purpose.**

The purpose of this part is to promote the effective utilization of the capabilities of the States in developing and maintaining an efficient and effective Federal royalty management system.

**§ 229.2 Policy.**

It shall be the policy of the Department of the Interior (DOI) to honor any properly made petition from the Chief Executive or other appopriate official of a State seeking delegation of authority under the provisions of 30 U.S.C. 1735 and to make a delegation to conduct audits and related investigations when the Secretary finds that the provisions of 30 U.S.C. 1735 have been complied with or can be complied with by a State seeking the delegation.

### § 229.4 Authority.

The Secretary of the DOI is authorized under provisons of 30 U.S.C. 1735 to delegate authority to States to conduct audits and related investigations with respect to all Federal lands within a State, and to those Indian lands to which a State has received permission from the respective Indian tribe(s) or allottee(s) to carry out audit activities under a delegation from the Secretray.

### § 229.6 Definitions.

The definitions contained in 30 U.S.C. 1702 and in Part 228 of this chapter apply to the activities carried out under the provisions of this part.

### § 229.10 Information collection requirements.

The information collection requirements contained in this part do not require approval by the Office of Management and Budget under 44 U.S.C. 3501 *et seq.*, because there are fewer than 10 respondents annually.

## Subpart B—Oil and Gas, General—[Reserved]

## Subpart C—Oil and Gas, Onshore

AUTHORITY: The Federal Oil and Gas Royalty Management Act of 1982 (30 U.S.C 1701 *et seq.*).

### ADMINISTRATION OF DELEGATIONS

### § 229.100 Authorities and responsibilities subject to delegation.

(a) All or part of the following authorities and responsibilities of the Secretary under the Act may be delegated to a State authority:

(1) Conduct of audits related to oil and gas royalty payments made to the MMS which are attributable to leased Federal or Indian lands within the State. Delegations with respect to any Indian lands require the written permission, subject to the review of the MMS, of the affected Indian tribe or allottee.

(2) Conduct of investigations related to oil and gas royalty payments made to the MMS which are attributable to leased Federal lands or Indian lands within the State. Delegation with respect to any Indian lands require the written permission, subject to the review of the MMS, of the affected Indian tribe or allottee. No investigation will be initiated without the specific approval of the MMS or the Secretary's designee and in accordance with the Departmental Manual.

(b) The following authorities and responsibilities are specifically reserved to the MMS and are not delegable under these regulations:

(1) Enforcement actions to assess and collect additional royalties identified as a consequence of audits, inspections, and investigations. These include all actions related to resolution of royalty obligations so identified, and the establishement and maintenance of payment performance bonds which may be required during the resolution process.

(2) Enforcement actions to collect civil penalties and interest charges related to findings of audits, inspections, and investigations.

(3) Administration of all appeals and all actions of the Department related to administrative and judicial litigation.

(4) Issuance of subpoenas.

(c) The provisions of this section do not limit the authority provided to the States by section 204 of the Act.

[49 FR 40026, Oct. 12, 1984]

### § 229.101 Petition for delegation.

(a) The governor or other authorized official of any State which contains Federal oil and gas leases, or Indian oil and gas leases where the Indian tribe and allottees have given the State an affirmative indication of their desire for the State to undertake certain royalty management-related activities on their lands, may petition the Secretary to assume responsibilities to conduct audits and related investigations of royalty related matters affecting Federal or Indian oil and gas leases within the State.

(b) A State may enter into a delegation of authority under this part without affecting a State's ability to enter into a cooperative agreement under Part 228 of this chapter.

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(c) The Secretary shall carry out all factfinding and hearings he may decide are necessary in order to approve or disapprove the petition.

(d) In the event that the Secretary denies the petition, the Secretary must provide the State with the specific reasons for denial of the petition. The State will then have 60 days to either contest or correct specific deficiencies and to reapply for a delegation of authority.

[49 FR 37350, Sept. 21, 1984. Redesignated and amended at 49 FR 40025, Oct. 12, 1984]

### § 229.102 Fact-finding and hearings.

(a) Upon receipt of a petition for delegation from a State, the Secretary shall appoint a representative to conduct a hearing or hearings to carry out factfinding and determine the ability of the petitioning State to carry out the delegated responsibilities requested in accordance with the provisions of this part.

(b) The Secretary's representative, after proper notice in the FEDERAL REGISTER and other appropriate media within the State, shall hold one or more public hearings to determine whether:

(1) The State has an acceptable plan for carrying out delegated responsibilities and if it is likely that the State will provide adequate resources to achieve the purposes of this part (30 U.S.C. 1735);

(2) The State has the ability to put in place a process within 60 days of the grant of delegation which will assure the Secretary that the functions to be delegated to the State can be effectively carried out;

(3) The State has demonstrated that it will effectively and faithfully administer the rules and regulations of the Secretary in accordance with the requirements at 30 U.S.C. 1735;

(4) The State's plan to carry out the delegated authority will be in accordance with the MMS standards; and

(5) The State's plan to carry out the delegated authority will be coordinated with MMS and the Office of Inspector General audit efforts to eliminate added burden on any lessee or group of lessees operating Federal or Indian oil and gas leases within the State.

(c) A State petitioning for a delegation of authority shall be given the opportunity to present testimony at a public hearing.

[49 FR 37350, Sept. 21, 1984. Redesignated and amended at 49 FR 40025, Oct. 12, 1984]

### § 229.103 Duration of delegations; termination of delegations.

(a) Delegations of authority shall be valid for a period of 3 years and may be renewable for an additional consecutive 3-year period upon request of the State and after the appropriate factfinding required in § 229.101. Delegations are subject to annual funding and the availability of appropriations specifically designated for the purpose of this part.

(b) A delegation of authority may be terminated at any time and upon any terms and conditions as mutually agreed upon by the parties.

(c) A State may terminate a delegation of authority by giving a 120-day written notice of intent to terminate.

(d) The Department may terminate a delegation of authority when it is determined, after opportunity for a hearing, that the State has failed to substantially comply with the provisions of the delegation of authority.

(e) No action to initiate formal hearing proceedings for termination shall be taken until the Department has notified the State in writing of alleged deficiencies and allowed the State 120 days to correct the deficiencies.

(f) Termination of a delegation shall not bar a subsequent request by a State to regain a delegation of authority.

[49 FR 37351, Sept. 21, 1984, as amended at 49 FR 40025, Oct. 12, 1984]

### § 229.104 Terms of delegation of authority.

Each delegation of authority under this part shall be in writing, shall incorporate all the requirements of this part, and shall specifically include:

(a) Terms obligating the State to conduct audit and investigative activities for a specific period of time;

(b) Terms describing the authorities and responsibilities reserved by the MMS, including, but not limited to, those specified under § 229.100;

(c) Terms requiring the State to provide annual audit workplans to include the lease universe by company, or by individual lease accounts, a description of the audit work product(s) to be delivered, and the State resources (staff and otherwise) to be committed to the delegation;

(d) Terms requiring the State to notify the MMS of any changed circumstances which would affect the State's ability to carry out the terms of the delegation;

(e) Terms requiring coordination of delegated activities among the State, the MMS, and the land management agencies responsible for management of the leases included in the audit universe;

(f) Terms requiring the State to maintain and make available to the MMS all audit workpapers, documents, and information gained or developed as a consequence of activities conducted under the delegation;

(g) Terms obligating the State to adhere to all Federal laws, rules and regulations, and Secretarial determinations and orders relating to the calculation, reporting, and payment of oil and gas royalties, in all activities performed under the delegation.

[49 FR 40026, Oct. 12, 1984]

### § 229.105 Evidence of Indian agreement to delegation.

In the case of a State seeking a delegation of authority for Indian lands as well as Federal lands, the State petition to the Secretary must be supported by an appropriate resolution or resolutions of tribal councils joining the State in petitioning for delegation and evidence of the agreement of individual Indian allottees whose lands would be involved in a delegation. Such evidence shall specifically speak to having the State assume delegated responsibility for specific functions related to royalty management activities.

[49 FR 37351, Sept. 21, 1984. Redesignated at 49 FR 40025, Oct. 12, 1984]

### § 229.106 Withdrawal of Indian lands from delegated authority.

If at any time an Indian tribe or an individual Indian allottee determines that it wishes to withdraw from the State delegation of authority in relation to its lands, it may do so by sending a petition of withdrawal to the State. Once the petition has been received, the State shall within 30 days cease all activities being carried out under the delegation of authority on the lands covered by the petition for the tribe or allottee.

[49 FR 37351, Sept. 21, 1984. Redesignated at 49 FR 40025, Oct. 12, 1984]

### § 229.107 Disbursement of revenues.

(a) The additional royalties and late payment charges resulting from State audit work done under a delegation of authority shall be collected by MMS. The State's share of any amounts so collected shall be paid to the State in accordance with the provisions of 30 U.S.C. 191 and Part 219 of this chapter.

(b) Amounts collected for Indian leases shall be transferred to the appropriate Indian accounts (designated Treasury accounts) managed by the Bureau of Indian Affairs at the earliest practicable date after such funds are received, but in no case later than the last business day of the month in which such funds are received.

(c) MMS shall provide to the State on a monthly basis, an accounting of collections resulting from audit work and enforcement actions resulting from a delegation of authority. Such accounting will identify collections broken down by royalties, penalties and interest paid.

[49 FR 40026, Oct. 12, 1984]

### § 229.108 Deduction of civil penalties accruing to the State or tribe under the delegation of authority.

Fifty percent of any civil penalty resulting from activities under a delegation of authority shall be shared with the delegated State. However, the amount of the civil penalty shared will be deducted from any Federal funding owed under a delegation of authority under the provisions of 30 U.S.C. 1735. MMS shall maintain records of civil penalties collected and distributed to the States involved in 30 U.S.C. 1735 delegations. Each quarterly payment will be reduced by the amount of the civil penalties paid to the delegated State or tribe during the prior quarter.

[49 FR 37351, Sept. 21, 1984. Redesignated at 49 FR 40025, Oct. 12, 1984]

### § 229.109 Reimbursement for costs incurred by a State under the delegation of authority.

(a) The Department of the Interior (DOI) shall reimburse the State for 100 percent of the direct cost associated with the activities undertaken under the delegation of authority. The State shall maintain books and records in accordance with the standards established by the DOI and will provide the DOI, on a quarterly basis, a summary of costs incurred for which the State is seeking reimbursement. Only costs as defined under the provisions of 30 U.S.C. 1735 are eligible for reimbursement.

(b) The State shall submit a voucher for reimbursement of costs incurred within 30 days of the end of each calendar quarter.

[49 FR 37351, Sept. 21, 1984]

### § 229.110 Examination of the State activities under delegation.

(a) The Department will carry out an annual examination of the State's delegated activities undertaken under the delegation of authority.

(b) The examination required by this section will consist of a management review and a fiscal examination and evaluation to determine—

(1) That activities being carried out by the State under the delegation of authority meet the standards established by the Department and in particular the provisions of 30 U.S.C. 1735; and

(2) That costs incurred by the State under the delegation of authority are eligible for reimbursement by the Department.

[49 FR 37351, Sept. 21, 1984. Redesignated at 49 FR 40025, Oct. 12, 1984]

### § 229.111 Materials furnished to States necessary to perform delegation.

The MMS shall provide to the State all reports, files, and supporting materials within its possession necessary to allow the State to effectively carry out the terms of the delegation specified in § 229.104.

[49 FR 40026, Oct. 12, 1984]

## DELEGATION REQUIREMENTS

SOURCE: Sections 229.120 through 229.126 appear at 49 FR 40026, Oct. 12, 1984, unless otherwise noted.

### § 229.120 Obtaining regulatory and policy guidance.

All activities performed by a State under a delegation must be in full accord with all Federal laws, rules and regulations, and Secretarial and agency determinations and orders relating to the calculation, reporting, and payment of oil and gas royalties. In those cases when guidance or interpretations are necessary, the State will direct written requests for such guidance or interpretation to the appropriate MMS officials. All policy and procedural guidance or interpretation provided by the MMS shall be in writing and shall be binding on the State.

### § 229.121 Recordkeeping requirements.

(a) The State shall maintain in a safe and secure manner all records, workpapers, reports, and correspondence gained or developed as a consequence of audit or investigative activities conducted under the delegation. All such records shall be made available for review and inspection upon request by representatives of the Secretary and the Department's Office of Inspector General (OIG).

(b) The State must maintain in a confidential manner all data obtained from DOI sources or from payor or company sources under the delegation which have been deemed "confidential or proprietary" by DOI or a company or payor. In this regard, the State regulatory authority shall be bound by provisions of 30 U.S.C. 1733. MMS shall provide to the State guidelines for determining confidential and proprietary material.

(c) All records subject to the requirements of subsection (a) must be maintained for a 6-year period measured from the end of the calendar year in which the records were created. All dispositions or records must be with the written approval of the MMS.

Upon termination of a delegation, the State shall, within 90 days from the date of termination, assemble all records specified in subsection (a), complete all working paper files in accordance with § 229.124, and transfer such records to the MMS.

(d) The State shall maintain complete cost records for the delegation in accordance with generally accepted accounting principles. Such records shall be in sufficient detail to demonstrate the total actual costs associated with the project and to permit a determination by MMS whether delegation funds were used for their intended purpose. All such records shall be made available for review and inspection upon request by representatives of the Secretary and the Department's Office of Inspector General (OGIG).

### § 229.122 Coordination of audit activities.

(a) Each State with a delegation of authority shall submit annually to the MMS an audit workplan specifically identifying leases, resources, companies, and payors scheduled for audit. This workplan must be submitted 120 days prior to the beginning of each fiscal year. A State may request changes to its workplan (including the companies and leases to be audited) at the end of each quarter of each fiscal year. All requested changes are subject to approval by the MMS and must be submitted in writing.

(b) When a State plans to audit leases of a lessee or royalty payor for which there is an MMS or OIG resident audit team, all audit activities must be coordinated through the MMS or OIG resident supervisor. Such activities include, but are not limited to, issuance of engagement letters, arranging for entrance conferences, submission of data requests, scheduling of audit activities including site visits, submission of issue letters, and closeout conferences.

(c) The State shall consult with the MMS and/or OIG regarding resolution of any coordination problems encountered during the conduct of delegation activities.

### § 229.123 Standards for audit activities.

(a) All audit activities performed under a delegation of authority must be in accordance with the "Standards for Audit of Governmental Organizations, Programs, Activities, and Functions" as issued by the Comptroller General of the United States.

(b) The following audit standards also shall apply to all audit work performed under a delegation of authority.

(1) *General standards*—(i) *Qualifications.* The auditors assigned to perform the audit must collectively possess adequate professional proficiency for the tasks required, including a knowledge of accounting, auditing, agency regulations, and industry operations.

(ii) *Independence.* In all matters relating to the audit work, the audit organization and the individual auditors must be free from personal or external impairments to independence and shall maintain an independent attitude and appearance.

(iii) *Due professional care.* Due professional care is to be used in conducting the audit and in preparing related reports.

(iv) *Quality control.* The State governments must institute quality control review procedures to ensure that all audits are performed in conformity with the standards established herein.

(2) *Examination and evaluation standards*—*Standards and requirements for examination and evaluation.* Auditors should be alert to situations or transactions that could be indicative of fraud, abuse, or illegal acts with respect to the program. If such evidence exists, auditors should forward this evidence to the Royalty Compliance Division (RCD) of the MMS. The RCD will contact the appropriate Federal law enforcement agencies. The scope of examinations are to be governed by the principle of a justifiable relationship between cost and benefit as determined by the auditor or audit supervisor. Audit procedures should reflect the most efficient method of obtaining the requisite degree of satisfaction. The auditor should determine, to the extent possible, the effect on royalty reporting of the non-arms'-length nature of related party transactions, such as transfers of oil to refinery units affiliated with the producer. A review should be made

of compliance with the appropriate laws and regulations applicable to program operations. MMS shall issue guidelines as to the definition and nature of arms'-length and non-arms'-length transactions for use in carrying out delegated audit activities.

(3) *Standards of reporting.* (i) Written audit reports are to be submitted to the appropriate MMS officials at the end of each field examination.

(ii) A statement in the auditors' report that the examination was made in accordance with the generally accepted program audit standards (including the applicable General Accounting Office (GAO) standards) for royalty compliance audits should be in the appropriate language to indicate that the audit was made in accordance with this statement of standards.

(iii) The auditor's report should contain a statement of positive assurance on those items tested and negative assurance on those items not tested. It should also include all instances of noncompliance and instances or indications of fraud, abuse, or illegal acts found during or in connection with the audit.

(iv) The auditor's report should contain any other material deficiency identified during the audit not covered in paragraph (b)(3)(iii) of this section.

(v) When factors external to the program and to the auditor restrict the audit or interfere with the auditor's ability to form objective opinions and conclusions (such as denial of access to information by a company), the auditor is to notify the MMS. If the limitation is not removed, a description of the matter must be included in the auditor's report. MMS will take all legally enforceable steps necessary to seek information necessary to complete the audit.

(vi) If certain information is prohibited from general disclosure, the auditor's report should state the nature of the information omitted and the requirement that makes the omission necessary.

(vii) Written audit reports are to be prepared in the format prescribed by the RCD.

(viii) In instances where the extent of the audit findings or the amounts involved do not warrant it, a formal audit report need not be issued. In lieu of an audit report, a memorandum of audit findings will be prepared and placed on the case file.

### § 229.124 Documentation standards.

Every audit performed by a State under a delegation of authority must meet certain documentation standards. In particular, detailed workpapers must be developed and maintained.

(a) "Workpapers" are defined to include all records obtained or created in performing an audit.

(b) Each audit performed varies in scope and detail. As a result, the audit team must determine the best presentation of the workpapers for a particular audit. The following general standards of workpaper preparation are consistent with the goal of achieving proper documentation while maintaining sufficient flexibility.

(1) All relevant information obtained orally must be promptly recorded in writing and incorporated in the workpapers.

(2) Workpapers must be complete and accurate in order to provide support for findings and conclusions.

(3) Workpapers should be clear and understandable without the need for supplementary oral explanations. The information they contain must be clear, complete, and concise, so that anyone using the workpapers will be able to readily determine their purpose, the nature and scope of the work done, and the conclusions drawn.

(4) Workpapers must be legible and as neat as practicable. They must meet standards which allow their use as evidence in judicial and administrative proceedings.

(5) The information contained in workpapers should be restricted to matters which are materially important and relevant to the objectives established for the assignment.

(6) Workpapers must be in sufficient detail to permit a subsequent independent execution of each audit procedure, assuming the target company retains its accounting documentation.

**§ 229.125 Preparation and issuance of enforcement documents.**

(a) Determinations of additional royalties due resulting from audit activities conducted under a delegation of authority must be formally communicated by the State, to the companies or other payors by an issue letter prior to any enforcement action. The issue letter will serve to ensure that all audit findings are accurate and complete by obtaining advance comments from officials of the companies or payors audited. Issue letters must be prepared in a format specified by the MMS, and transmitted to the company or payor. The company or payor shall be given 30 days from receipt of the letter to respond to the State on the findings contained in the letter.

(b) After evaluating the company or payor's response to the issue letter, the State shall draft a demand letter which will be submitted with supporting workpaper files to the MMS for appropriate enforcement action. Any sustantive revisions to the demand letter will be discussed with the State prior to issuance of the letter. Copies of all enforcement action documents shall be provided to the State by MMS upon their issuance to the company or payor.

**§ 229.126 Appeals.**

(a) Appeals made pursuant to the rules and procedures at 30 CFR Parts 243 and 290 related to demand letters issued by officers of the MMS for additional royalties identified under a delegation of authority shall be filed with the MMS for processing. The State regulatory authority shall, upon the request of the MMS, provide competent and knowledgeable staff for testimony, as well as any required documentation and analyses, in support of the lessor's position during the appeal process.

(b) An affected State, upon the request of the MMS, shall provide expert witnesses from their audit staff for testimony as well as required documentation and analyses to support the Department's position during the litigation of court cases arising from denied appeals. The cost of providing expert witnesses including travel and per diem is reimbursable under the provisions of a delegation of authority, at the Federal Government's existing per diem rates.

**§ 229.127 Reports from States.**

The State, acting under the authority of the Secretarial delegation, shall submit quarterly reports which will summarize activities carried out by the State during the preceding quarter of the year under the provisions of the delegation. The report shall include:

(a) A statistical summary of the activities carried out, e.g., number of audits performed, accounts reconciled, and other actions taken;

(b) A summary of costs incurred during the previous quarter for which the State is seeking reimbursement; and

(c) A schedule of changes which the State proposes to make from its approved plan.

[49 FR 37351, Sept. 21, 1984. Redesignated at 49 FR 40025, Oct. 12, 1984]

## PART 230—ROYALTY REFUNDS—[RESERVED]

## PART 232—INTEREST PAYMENTS—[RESERVED]

## PART 233—ESCROW AND INVESTMENTS—[RESERVED]

## PART 234—BONDING—PAYMENT LIABILITY—[RESERVED]

## PART 241—PENALTIES

### Subpart A—General Provisions

Sec.
241.10 Information collection.
241.20 Civil penalties authorized by statutes other than the Federal Oil and Gas Royalty Management Act of 1982.

### Subpart B—Oil and Gas, General

241.50 Definitions.
241.51 Civil penalties authorized by the Federal Oil and Gas Royalty Management Act of 1982.
241.52 Criminal penalties.

### Subpart C—Oil and Gas, Onshore

241.100 Liquidated damages.

Sec.

### Subpart D—Offshore Oil and Gas—[Reserved]

### Subpart E—Coal—[Reserved]

### Subpart F—Other Solid Minerals—[Reserved]

### Subpart G—Geothermal—[Reserved]

### Subpart H—Indian Lands—[Reserved]

AUTHORITY: The Act of February 25, 1920 (30 U.S.C. 181, et seq.), as amended; the Act of May 21, 1930 (30 U.S.C. 301-306); the Mineral Leasing Act for Acquired Lands (30 U.S.C. 351-359), as amended; the Act of March 3, 1909 (25 U.S.C. 396), as amended; the National Environmental Policy Act of 1969 (42 U.S.C. 4321, et seq.) as amended; the Act of May 11, 1938 (25 U.S.C. 396a-396q), as amended; the Act of February 28, 1891 (25 U.S.C. 397), as amended; the Act of May 29, 1924 (25 U.S.C. 398); the Act of March 3, 1927 (25 U.S.C. 398a-398e); the Act of June 30, 1919 (25 U.S.C. 399), as amended; R.S. § 441 (43 U.S.C. 1457), see also Attorney General's Opinion of April 2, 1941 (40 Op. Atty. Gen. 41); the Federal Property and Administrative Services Act of 1949 (40 U.S.C. 471, et seq.), as amended; the National Environmental Policy Act of 1969 (42 U.S.C. 4321 et seq.), as amended; the Act of December 12, 1980 (Pub. L. 96-514, 94 Stat. 2964); the Combined Hydrocarbon Leasing Act of 1981 (Pub. L. 97-78, 95 Stat. 1070); the Outer Continental Shelf Lands Act (43 U.S.C. 1331, et seq.), as amended; section 2 of Reorganization Plan No. 3 of 1950 (64 stat. 1262); Secretarial Order No. 3071 of January 19, 1982, as amended, and Secretarial Order 3087, as amended.

## Subpart A—General Provisions

### § 241.10 Information collection.

The information collection requirements contained in Part 241 have been approved by the Office of Management and Budget (OMB) under 44 U.S.C. 3504(h). The forms and approved OMB clearance numbers are as follows:

| Form No., name, and filing date | OMB No. |
|---|---|
| 9-329/329A—Monthly Report of Operations—due 10th day of second month following production month | 1010-0005 |
| 9-361/361A—Monthly Report of Sales and Royalty—due 10th day of second month following production month | 1010-0009 |

The information is being collected by the Department of the Interior to meet its congressionally mandated accounting and audit responsibilities relating to Federal and Indian mineral royalty management. The information will be used to determine the type and quantity of mineral production on Federal and Indian lands, the amount of royalties due, the person(s) responsible for payment, and the amounts paid. The reports are mandatory.

[48 FR 43323, Sept. 23, 1983]

### § 241.20 Civil penalties authorized by statutes other than the Federal Oil and Gas Royalty Management Act of 1982.

(a) Whenever a lessee, operator, revenue payor, or other authorized person fails to comply with any regulations, orders or notices, the appropriate MMS official shall give the lessee, operator, revenue payor, or other authorized person notice in writing to remedy any violations.

(b) Failure by the lessee, operator, revenue payor, or other authorized person, or other party to complete the necessary remedial action within the time and in the manner prescribed by the notice may subject the lease to cancellation proceedings pursuant to 30 CFR 250.12 for offshore leases, 43 CFR Subpart 3163 and 3108 for Federal onshore leases, or provisions of 25 CFR for Indian leases.

(c) The lessee, operator, revenue payor, or other authorized person, shall be subject to a penalty of not more than $500 per day for each day the violation specified in the notice continues beyond the date specified in the notice, not to exceed 60 days. In addition to this penalty or in lieu thereof, MMS can take steps to cancel the lease.

(d) No penalty under this section shall be assessed until the person charged with a violation has been given the opportunity for a hearing. Hearings shall be held by the appropriate MMS official whose findings shall be conclusive unless an appeal is taken pursuant to 30 CFR Part 243.

[49 FR 37352, Sept. 21, 1984; 49 FR 40576, Oct. 17, 1984]

## Subpart B—Oil and Gas, General

AUTHORITY: The Federal Oil and Gas Royalty Management Act of 1982 (30 U.S.C. 1701 *et seq.*)

SOURCE: 49 FR 37352, Sept. 21, 1984, unless otherwise noted.

### § 241.50 Definitions.

Terms used in this subpart shall have the same meaning as in 30 U.S.C. 1702.

### § 241.51 Civil penalties authorized by the Federal Oil and Gas Royalty Management Act of 1982.

(a)(1) *Notice of noncompliance.* If the MMS believes that any person has failed or refused to comply with any statute, regulation, rule, order, lease, or permit governing the determination and collection of royalties on Federal or Indian lands or on the Outer Continental Shelf, the MMS may issue a notice of noncompliance which shall set forth the nature of the violation and the remedial action required.

(2) The notice of noncompliance shall be served by personal service by an authorized representative of the MMS or by registered mail. Service by registered mail shall be deemed to occur when received or 5 days after the date it is mailed, whichever is earlier.

(3) When a notice of noncompliance is issued by the MMS under this section:

(i) Unless the violation is corrected within 20 days (or such longer time as specified in the notice) from the date that the notice is served, the person upon whom the notice is served shall be liable for a penalty of up to $500 per violation for each day such violation continues, dating from the date of service of the notice;

(ii) Unless the violation is corrected within 40 days (or such longer time as specified in the notice) from the date that the notice is served, the person upon whom the notice is served shall be liable for a penalty of up to $5,000 per violation for each day such violation continues;

(iii) If the person upon whom the notice is served does not correct the violation within 20 days (or such longer time as specified in the notice) from the date that the notice is served, such person may, by that date, request a hearing on the record by filing a written request with the Hearings Division (Departmental), Office of Hearings and Appeals, U.S. Department of the Interior, 4015 Wilson Boulevard, Arlington, Virginia 22203.

(4) If the person upon whom a notice of noncompliance has been served pursuant to paragraph (a)(3) of this section corrects the violations within 20 days (or such longer time as specified in the notice) from the date that the notice is served, no penalties shall be assessed by the MMS under this section and the person shall not be entitled to a hearing on the record provided for in paragraph (a)(3)(iii) of this section. The person may appeal the notice of noncompliance or other disputed MMS decision or order in accordance with the appeals procedures in 30 CFR Part 243.

(b)(1) *Notice of noncompliance for intentional violations.* In addition to the provisions of paragraph (a) of this section, the MMS may issue a notice of noncompliance for intentional violations, which shall set forth the nature of the violation and the remedial action required, to any person who—

(i) Knowingly or willfully fails to make any payment due by the date as specified by statute, regulation, order, or terms of the lease;

(ii) Knowingly or willfully fails to submit or submits false, inaccurate, or misleading data to the MMS in support of a royalty, rental, bonus, or other payment; or

(iii) Knowingly or willfully prepares, maintains or submits false, inaccurate, or misleading reports, notices, affidavits, records, data, or other written information.

(2) A person served with a notice of noncompliance for an intentional violation under this paragraph shall be liable for a penalty of up to $10,000 per violation for each day such violation continues.

(3) The notice of noncompliance for intentional violation shall be served in accordance with paragraph (a)(2) of this section.

(4) A person who has been served with a notice of noncompliance for intentional violation issued pursuant to

this subsection shall have 20 days from the date of service to file a written request for a hearing on the record with the Hearings Division (Departmental), Office of Hearings and Appeals, U.S. Department of the Interior, 4015 Wilson Boulevard, Arlington, Virginia 22203.

(c) *Penalty notice.* The MMS shall issue a penalty notice to any person subject to penalties under this section. The penalty notice shall set forth the amount of the penalty applicable for each day that the violation continues. The penalty amount shall be determined by MMS taking into account the severity of the violation and the person's history of noncompliance. The penalty for each day that a violation continues shall not exceed the amounts specified in paragraphs (a) and (b), of this section as applicable.

(d) Penalties imposed under this section shall be in addition to interest assessed on payments not received by the MMS by the due date and assessments for later or incorrect reporting pursuant to Part 218 of this chapter.

(e) If the person served with a notice of noncompliance requests a hearing on the record pursuant to paragraph (a)(3)(iii) or paragraph (b)(4) of this section penalties shall accrue each day until the person corrects the violations set forth in the notice of noncompliance. The Director, MMS, may suspend the requirement to correct the violations pending completion of the hearings provided by this section, but only if the Director, MMS, suspends the obligation in writing, and then only upon a determination, at the discretion of the Director, that such suspension will not be detrimental to the lessor and upon submission and acceptance of a bond deemed adequate to indemnify the lessor from loss or damage. The amount of the bond must be sufficient to cover any disputed amounts plus accrued penalties and interest. The MMS may require, at any time, adjustment in the amount of the bond for increases in the amount of the underlying obligations determined by MMS to be due, for penalties or for interest.

(f) *Hearing.* If a person served with a notice of noncompliance has requested a hearing on the record in accordance with paragraph (a)(3)(iii) or (b)(4) of this section, the hearing shall be conducted by an Administrative Law Judge (Departmental), Office of Hearings and Appeals. After the hearing, the Administrative Law Judge shall issue a decision in accordance with the evidence presented and applicable law. Any party to a case adversely affected by a decision of the Administrative Law Judge may appeal that decision to the Interior Board of Land Appeals in accordance with the procedures set forth in 43 CFR Part 4. A decision by the Interior Board of Land Appeals shall be a final order which may be appealed in accordance with paragraph (i) of this section.

(g) The Director of the MMS shall issue an order assessing the penalty, in accordance with the penalty notice, against any person subject to penalties under paragraph (a) or (b) of this section who does not request a hearing on the record as provided in paragraph (a)(3)(iii) or (b)(4) of this section. The penalty assessment must be paid within 30 days of its issuance and shall be a final order subject to collection pursuant to the provisions of paragraph (j) of this section.

(h) On a case-by-case basis the Secretary, or his/her authorized representative, may compromise or reduce civil penalties under this section. The amount of any penalty under this section, as finally determined, may be deducted from any sums owing by the United States to the person charged.

(i) Any person who has requested a hearing in accordance with paragraph (a) or (b) of this section within the time prescribed for such a hearing and who is aggrieved by a final order may seek review of such order in the United States District Court for the judicial district in which the violation allegedly took place. Review by the District Court shall be only on the administrative record and not *de novo*. Such action shall be barred unless filed within 90 days after the final order.

(j) If any person fails to pay an assessment of a civil penalty under this section after the order making the assessment has become a final order, and if such person has not filed a petition for judicial review in accordance with paragraph (i) of this section, or, after a court, in an action brought under this section, has entered a final judgment in favor of the Secretary, the Court shall have jurisdiction to award the amount assessed plus interest assessed from the date of the expiration of the 90-day period referred to in paragraph (i) of this section. The amount of any penalty, as finally determined, may be deducted from any sum owing by the United States to the person charged.

### § 241.52 Criminal penalties.

Any person who commits an act for which a civil penalty is provided at 30 U.S.C. 1719 shall be subject to criminal penalties as provided at 30 U.S.C. 1720.

## Subpart C—Oil and Gas, Onshore

### § 241.100 Liquidated damages.

Administrative costs arising out of certain defaults or violations of orders requiring the performance of certain duties by lessees, as set forth in the regulations in this part, constitute loss or damage to the United States the amount of which is difficult or impracticable of ascertainment. Therefore, the following amounts shall be deemed to cover such loss or damage and shall be payable upon receipt of notice from the Associate Director of such loss or damage.

(a) For failure to comply with a written order or instructions of the Associate Director, $250 if compliance is not obtained within the time specified.

(b) For failure to file sales contracts or division orders as required by lease terms, $25 for each violation, and for failure to submit pipeline run tickets, or other proper evidence of disposal as required by these regulations, $10 for each violation.

(c) For failure to file the following reports within the time specified in the regulations in this part, or within such other time designated in writing by the Associate Director, $10 for each violation.

(1) Lessee's Monthly Report of Operations, Daily Report of Gas-Producing Wells, when required, Lessee's Statement of Oil and Gas Runs and Royalties.

(2) Special forms or reports as required by the Associate Director.

[47 FR 47775, Oct. 27, 1982. Redesignated at 48 FR 35641, Aug. 5, 1983]

## Subpart D—Offshore Oil and Gas—[Reserved]

## Subpart E—Coal—[Reserved]

## Subpart F—Other Solid Minerals—[Reserved]

## Subpart G—Geothermal—[Reserved]

## Subpart H—Indian Lands—[Reserved]

# PART 242—NOTICES AND ORDERS—[RESERVED]

# PART 243—APPEALS—ROYALTY MANAGEMENT PROGPAM

### Subpart A—General Provisions

Sec.
243.1 Procedure.
243.2 Effectiveness of orders or decisions pending appeal.

## Subpart A—General Provisions

### § 243.1 Procedure.

Except as may otherwise be provided in Part 241 hereof, an order or decision issued under regulations administered by the Royalty Management Program may be appealed in accordance with the provisions of Part 290 of this chapter.

(R.S. 463, 25 U.S.C. 2, R.S. 465, 25 U.S.C. 9; sec. 32, 41 Stat. 450, 30 U.S.C. 189, sec. 5, 44 Stat. 1058, 30 U.S.C. 285; sec. 10, 61 Stat. 915, 20 U.S.C. 359; secs. 5, 6, 67 Stat. 464, 465, 43 U.S.C. 1334, 1335; sec. 24, 84 Stat. 1573, 30 U.S.C. 1023, 30 U.S.C. 1701 *et seq.*)

[49 FR 37353, Sept. 21, 1984]

### § 243.2 Effectiveness of orders or decisions pending appeal.

Compliance with any orders or decisions, issued by the Royalty Management Program after August 12, 1983, including payments of additional royalty, rents, bonuses, penalties or other assessments, shall not be suspended by reason of an appeal having been taken unless such suspension is authorized in writing by the Director, MMS, (or by the Deputy Assistant Secretary for Indian Affairs when Indian lands are involved), and then only upon a determination, at the discretion of the Director or Deputy Associate Secretary for Indian Affairs, that such suspension will not be detrimental to the lessor and upon submission and acceptance of a bond deemed adequate to indemnify the lessor from loss or damage.

(R.S. 463, 25 U.S.C. 2; R.S. 465, 25 U.S.C. 9; sec. 32, 41 Stat. 450, 30 U.S.C. 189; sec. 5, 44 Stat. 1058, 30 U.S.C. 285; sec. 10, 61 Stat. 915, 20 U.S.C. 359; secs. 5, 6, 67 Stat. 464, 465, 43 U.S.C. 1334, 1335; sec. 24, 84 Stat. 1573, 30 U.S.C. 1023, 30 U.S.C. 1701 *et seq.*)

[49 FR 37353, Sept. 21, 1984]

# SUBCHAPTER B—OFFSHORE

## PART 250—OIL AND GAS AND SULPHUR OPERATIONS IN THE OUTER CONTINENTAL SHELF

### GENERAL PROVISIONS

Sec.
250.0 Authority for information collection.
250.1 Purpose and authority.
250.2 Definitions.
250.3 Data and information to be made available to the public.
250.4 Privileged and proprietary data and information to be made available to affected States.
250.5 Effect of regulations on provisions of section 6 leases.

### JURISDICTION AND FUNCTIONS

250.10 Jurisdiction.
250.11 Functions.
250.12 Suspension of operations and lease cancellation.
250.13 Temporary approvals.
250.15 Drilling and abandonment of wells.
250.16 Well potentials and permissible flow.
250.17 Well spacing.
250.18 Right of use and easement.
250.19 Access to platforms.
250.20 Pipeline approval.

### REQUIREMENTS FOR LESSEES

250.30 Lease provisions, regulations, waste, damage, and safety.
250.31 Designation of operator.
250.32 Local agent.
250.33 Drilling and producing obligations.
250.34 Exploration, development, and production activities.
250.34-1 Exploration plan.
250.34-2 Development and production plan.
250.34-3 Environmental Report.
250.34-4 Compliance with the National Environmental Policy Act (NEPA).
250.35 Effect of drilling or well reworking on lease term.
250.36 Applications for permit to drill, deepen, or plug back.
250.37 Marking platforms, structures, and wells.
250.38 Well records.
250.39 Tests, surveys, and samples.
250.40 Directional survey.
250.41 Control of wells.
250.42 Treatment of production.
250.43 Pollution and waste disposal.
250.44 Borehole abandonment.
250.45 Accidents, fires, and malfunctions.
Sec.
250.46 Safe and workmanlike operations.
250.50 Authority and requirements for unitization.
250.51 Procedures for unitization.
250.51-1 Voluntary unitization.
250.51-2 Compulsory unitization.
250.52 Pooling or drilling agreements.
250.53 Subsurface storage of oil or gas.
250.54 Marking of equipment.
250.55 Flaring and venting of natural gas.
250.57 Air quality.
250.57-1 Facilities described in a new or revised exploration plan or development and production plan.
250.57-2 Existing facilities.
250.58 Reimbursement to lessees.

### MEASUREMENT OF PRODUCTION AND COMPUTATION OF ROYALTIES

250.60 Measurement of oil.
250.61 Measurement of gas.
250.63 Quantity basis for substances extracted from gas.
250.68 Commingling production.
250.69 Measurement of sulphur.

### INVESTIGATIONS

250.70 Reports and investigations of apparent violations.
250.71 Reports on investigations.
250.72 Knowing and willful violations.

### REMEDIES AND PENALTIES

250.80 Remedies and penalties.
250.80-1 Remedies.
250.80-2 Penalties.
250.81 Appeals.
250.82 Judicial review.

### REPORTS TO BE MADE BY ALL LESSEES (INCLUDING OPERATORS)

250.90 General requirements.
250.92 Sundry notices and reports on wells.
250.93 Monthly report of operations.
250.95 Well completion or recompletion report and log.
250.96 Special forms or reports.

AUTHORITY: Outer Continental Shelf Lands Act, 43 U.S.C. 1331 *et seq.*, as amended, 92 Stat. 629; National Environmental Policy Act of 1969, 42 U.S.C. 4332 *et seq.* (1970); Coastal Zone Management Act of 1972, as amended, 16 U.S.C. 1451 *et seq.*

SOURCE: 44 FR 61892, Oct. 26, 1979, unless otherwise noted.

CROSS REFERENCE: For other regulations pertaining to the issuance and recognition of mineral leases covering submerged lands in the Outer Continental Shelf, see 43 CFR Part 3300.

EDITORIAL NOTE: Nomenclature changes to this part appear at 47 FR 28369, June 30, 1982.

### § 250.0 Authority for information collection.

(a) The information collection requirement contained in 30 CFR 250.58 has been approved by the Office of Management and Budget under 44 U.S.C. 3507 and assigned clearance number 1028-0039. The information is being collected and will be used to determine eligibility for reimbursement from the Government for certain costs. The obligation to respond is required to obtain a benefit.

(b) The information collection requirement contained in 30 CFR 250.12 has been approved by the Office of Management and Budget under 44 U.S.C. 3507 and assigned clearance number 1028-0043. The information is being collected and will be used to determine the propriety of granting a suspension of operations requested by a lessee. The obligation to respond is required to obtain a benefit.

(c) The information collection requirements contained in 30 CFR 250.45 have been approved by the Office of Management and Budget under 44 U.S.C. 3504(h) and assigned clearance number 1010-0035. The information is being collected and will be used for analysis of safety concerns offshore. The obligation to respond is mandatory under section 21 of the Outer Continental Shelf Lands Act (43 U.S.C. 1347).

(d) The information collection requirements for Form MMS-331C contained in 30 CFR 250.36 have been approved by the Office of Management and Budget under 44 U.S.C. 3504(h) and assigned clearance number 1010-0044. The information is being collected and will be used to evaluate and approve the lessees' proposal to drill, deepen, or plug back a well. The obligation to respond is mandatory.

(e) The information collection requirements for Form MMS 331 contained in 30 CFR 250.38 and 250.92 have been approved by the Office of Management and Budget under 44 U.S.C. 3504(h) and assigned clearance number 1010-0045. The information is being collected and will be used to evaluate the technical, safety, and environmental factors involved with wells offshore. The obligation to respond is mandatory.

(f) The information collection requirements for Form MMS-330 contained in 30 CFR 250.38 and 250.95 have been approved by the office of Management and Budget under 44 U.S.C. 3504(h) and assigned clearance number 1010-0046. The information is being collected and will be used to evaluate the technical, safety, and environmental factors involved in completing or recompleting a well. The obligation to respond is mandatory.

(g) The information collection requirements for Form MMS-152 contained in 30 CFR 250.93 have been approved by the Office of Management and Budget under 44 U.S.C. 3504(h) and assigned clearance number 1010-0012. The information is being collected and will be used to evaluate the technical, safety, and environmental factors involved in oil and gas operations offshore once drilling has commenced. The obligation to respond is mandatory.

(h) The information collection requirements contained in 30 CFR 250.80 have been approved by the Office of Management and Budget under 44 U.S.C. 3504(h) and assigned clearance number 1010-0038. The information is being collected and will be used to review violations for possible imposition of civil penalties when appropriate. The obligation to respond is mandatory.

(i) The information collection requirements contained in 30 CFR 250.34 have been approved by the Office of Management and Budget under 44 U.S.C. 3504(h) and assigned clearance number 1010-0049. The information is being collected and will be used to analyze and evaluate the planned exploration and development and production activities of lessees offshore, in order to assure compliance with the requirements of the OCS Lands Act, 43 U.S.C. 1331 et seq. The obligation to respond is mandatory.

[47 FR 25331, June 11, 1982, as amended at 47 FR 30057, July 12, 1982; 48 FR 43324, Sept. 23, 1983; 48 FR 44777, Sept. 30, 1983; 48 FR 55567, Dec. 14, 1983]

## GENERAL PROVISIONS

### § 250.1 Purpose and authority.

The Act authorizes the Secretary to prescribe rules and regulations necessary to carry out the provisions of the Act. The Secretary is authorized to prescribe and amend regulations that the Secretary determines to be necessary and proper in order to provide for the prevention of waste and the conservation of the natural resources of the Outer Continental Shelf (OCS) and the protection of correlative rights therein, and these rules and regulations apply as of their effective date to all operations conducted under a lease issued or maintained under the provisions of the Act. In the enforcement of safety, environmental, and conservation laws and regulations, the Secretary is authorized to cooperate with other relevant Departments and Agencies of the Federal Government and of affected States. Subject to the supervisory authority of the Secretary, and unless otherwise specified, the regulations in this part shall be administered by the Director of the Minerals Management Service.

### § 250.2 Definitions.

When used in the regulations in this part, the following terms shall have the meanings given below:

(a) "Act" means the Outer Continental Shelf Lands Act, as amended (43 U.S.C. 1331 *et seq.*).

(b) "Affected local government" means the principal governing body of a locality which is in an affected State and is identified by the Governor of that State as a locality which will be significantly affected by oil and gas activities on the OCS.

(c) "Affected state" means, with respect to any program, plan, lease sale, or other activity proposed, conducted, or approved pursuant to the provisions of the Act, any State:

(1) The laws of which are declared, pursuant to section 4(a)(2)(A) of the Act, to be the law of the United States for the portion of the OCS on which such activity is, or is proposed to be, conducted;

(2) Which is, or is proposed to be, directly connected by transportation facilities to any artifical island or installation or other device permanently or temporarily attached to the seabed;

(3) Which is receiving or, in accordance with the proposed activity, will receive oil for processing, refining, or transshipment which was extracted from the OCS and transported directly to such State by means of vessels or by a combination of means including vessels;

(4) Which is designated by the Secretary as a State in which there is a substantial probability of significant impact on or damage to the coastal, marine, or human environment or a State in which there will be significant changes in the social, governmental, or economic infrastructure resulting from the exploration, development, and production of oil and gas anywhere in the OCS; or

(5) In which the Secretary finds that because of such activity there is, or will be, a significant risk of serious damage, due to factors such as prevailing winds and currents, to the marine or coastal environment in the event of any oilspill, blowout, or release of oil or gas from vessels, pipelines, or other transshipment facilities.

(d) "Analyzed geological information" means data collected under a permit or a lease which have been analyzed. Analysis may include, but is not limited to, identification of lithologic and fossil content, core analyses, laboratory analyses of physical and chemical properties, well logs or charts, results from formation fluid tests, and descriptions of hydrocarbon occurrences or hazardous conditions.

(e) [Reserved]

(f) "Coastal environment" means the physical, atmospheric, and biolgical components, conditions, and factors which interactively determine the productivity, state, condition, and quality of the terrestrial ecosystem from the shoreline inward to the boundaries of the coastal zone.

(g) "Coastal zone" means the coastal waters (including the lands therein and thereunder) and the adjacent shorelands (including the waters therein and thereunder), strongly influenced by each other and in proximity to the shorelines of the several coastal States. The coastal zone includes islands, transition and intertidal areas, salt marshes, wetlands, and beaches. The coastal zone extends seaward to the outer limit of the United States territorial sea and extends inland from the shoreline to the extent necessary to control shorelands, the uses of which have a direct and significant impact on the coastal waters, and the inward boundaries of which may be identified by the several coastal States, pursuant to the authority of section 305(b)(1) of the Coastal Zone Management Act.

(h) "Coastal Zone Management Act" means the Coastal Zone Management Act of 1972, as amended (16 U.S.C. 1451 *et seq.*).

(i) "Correlative rights," when used with respect to lessees of adjacent tracts, means the right of each lessee to be afforded an equal opportunity to explore for, develop, and produce, without waste, oil or gas, or both, from a common source.

(j) "Cultural resource" means a site, structure, or object of historical or archeological significance.

(k) "Data" means facts and statistics or samples which have not been analyzed or processed.

(l) "Development" means those activities which take place following discovery of minerals in paying quantities, including but not limited to geophysical activity, drilling, platform construction, and operation of all directly related onshore support facilities, and which are for the purpose of ultimately producing the minerals discovered.

(m) "Directional drilling" means the deviation of a borehole from the vertical or from its normal course in an intended predetermined direction or course with respect to the points of the compass. Directional drilling shall not include deviations made for the purpose of straightening a hole that has become crooked in a normal course of drilling or deviations made at random, without regard to compass direction, in an attempt to sidetrack a portion of the hole on account of mechanical difficulty in drilling.

(n) "Director" means the Director of the Minerals Management Service of the U.S. Department of the Interior or a subordinate authorized to act on the Director's behalf.

(o) "Drilling operations" means actual operations including the physical penetration of the seafloor for the purpose of creating a borehole, testing activities to demonstrate the capability of a well to produce oil or gas, and the completion operations needed to make a well physically able to produce oil or gas, or both.

(p) "Eastern Gulf of Mexico" means all OCS areas in the Gulf of Mexico deemed by the Director to be adjacent to the State of Florida.

(q) "Exploration" means the process of searching for minerals. Exploration activities include but are not limited to: (1) Geophysical surveys where magnetic, gravity, seismic, or other systems are used to detect or imply the presence of such minerals and (2) any drilling, whether on or off a known geological structure. Exploration also includes the drilling of a well in which a discovery of oil or natural gas in paying quantities is made and the drilling of any additional well, after a discovery, which is needed to delineate a reservoir and to enable the lessee to determine whether to proceed with development and production.

(r) "Fair market value" means the value of any mineral computed at a unit price equivalent to the average unit price at which the mineral was sold pursuant to a lease during the period for which any royalty or net profit share is accrued or reserved to the United States pursuant to the lease. If the Secretary finds that there were no sales or there were an insufficient number of sales to equitably determine the value, computed at the average unit price at which the mineral was sold pursuant to other leases in the same region of the OCS during the period, or if the Secretary finds there were no sales of the mineral from the region during the period or there were an insufficient number of sales to equitably determine the value, fair market value shall be computed at an appropriate price determined by the Secretary.

(s) "Gas" means any fluid, either combustible or noncombustible, which is extracted from a reservoir and which has neither independent shape nor volume, but tends to expand indefinitely; a substance that exists in a gaseous or rarefied state under standard temperature and pressure conditions.

(t) "Governor" means the Governor of a State, or the person or entity designated by, or pursuant to, State law to exercise the powers granted to a Governor pursuant to the Act.

(u) "Human environment" means the physical, social, and economic components, conditions, and factors which interactively determine the state, condition, and quality of living conditions, employment, and health of those affected, directly or indirectly, by activities occurring on the OCS.

(v) "Information," when used without a qualifying adjective, includes analyzed geological information, processed geophysical information, interpreted geological information, and interpreted geophysical information.

(w) "Interpreted geological information" means knowledge, often in the form of schematic cross sections and maps, developed by determining the geological significance of data and analyzed geological information.

(x) "Interpreted geophysical information" means knowledge, often in the form of schematic cross sections and maps, developed by determining the geological significance of geophysical data and processed geophysical information.

(y) "Lease" means any form of authorization which is issued under section 8 or maintained under section 6 of the Act and which authorizes exploration for, and development and production of, minerals, or the area covered by that authorization, whichever is required by the context.

(z) "Lessee" means the party authorized by a lease, or an approved assignment thereof, to explore for and develop and produce the leased deposits in accordance with the regulations in this part. The term includes all parties holding that authority by or through the lessee.

(aa) "Major Federal action" means any action or proposal by the Secretary which is subject to the provisions of section 102(2)(C) of the National Environmental Policy Act (i.e., an action which will have a significant impact upon the quality of the human environment requiring preparation of an Environmental Impact Statement pursuant to section 102(2)(C) of the National Environmental Policy Act).

(bb) "Marine environment" means the physical, atmospheric, and biological components, conditions, and factors which interactively determine the productivity, state, condition, and quality of the marine ecosystem, including the waters of the high seas, the contiguous zone, transitional and intertidal areas, salt marshes, and wetlands within the coastal zone and on the OCS.

(cc) "Minerals" includes oil, gas, sulphur, geopressured-geothermal and associated resources, and all other minerals which are authorized by an Act of Congress to be produced from "public lands" and defined in section 103 of the Federal Land Policy and Management Act of 1976 (43 U.S.C. 1701).

(dd) "National Environmental Policy Act" means the National Environmental Policy Act of 1969 (42 U.S.C. 4332 *et seq.*).

(ee) "OCS Order" means a formal numbered Order, issued by the Director, that implements the regulations in this part and specifically applies to operations in an area identified in the Order.

(ff) "Oil" means any fluid hydrocarbon substance other than gas which is extracted in a fluid state from a reservoir and which exists in a fluid state under the existing temperature and pressure conditions of the reservoir. Oil includes liquefiable hydrocarbon substances such as drip gasoline or other natural condensates recovered or recoverable in a liquid state from produced gas.

(gg) "Operator" means the individual, partnership, firm, or corporation having control or management of operations on the leased area or a portion thereof. The operator may be a lessee, designated agent of the lessee, or holder of rights under an approved operating agreement.

(hh) "Outer Continental Shelf (OCS)" means all submerged lands lying seaward and outside of the area of lands beneath navigable waters as defined in section 2 of the Submerged Lands Act (43 U.S.C. 1301) and of which the subsoil and seabed appertain to the United States and are subject to its jurisdiction and control.

(ii) "Party," when used in § 250.80, means the person alleged to have violated any provision of the Act, or any term of a lease, license, or permit issued pursuant to the Act, or any regulation or order issued under the Act, and includes an individual or a public or private corporation, partnership or other association, or a government entity.

(jj) "Permittee" means the party authorized by a permit issued pursuant to Part 251 of this chapter to conduct activities on the OCS.

(kk) "Processed geophysical information" means data collected under a permit or a lease which have been processed. Processing involves changing the form of data so as to facilitate interpretation. Processing operations may include, but are not limited to, applying corrections for known perturbing causes, rearranging or filtering data, and combining or transforming data elements.

(ll) "Pollution contingency plan" means the National Multi-Agency Oil and Hazardous Materials Pollution Contingency Plan or any successor plan thereto.

(mm) "Production" means those activities which take place after the successful completion of any means for the removal of minerals. Production includes removal of minerals, field operations, transfer of minerals to shore, operation monitoring, maintenance, and/or workover drilling, and depends upon the context in which the term is used.

(nn) "Reviewing officer" means an employee of the Minerals Management Service who is delegated the authority to assess civil penalties and, when appropriate, to recommend the initiation of criminal proceedings.

(oo) "Secretary" means the Secretary of the Interior or a subordinate authorized to act on the Secretary's behalf.

(pp) "Violation" means a failure to comply with any provision of the Act, or of a regulation or order issued under the Act, or any term of a lease, license, or permit issued pursuant to the Act.

(qq) "Waste of oil and gas" means: (1) The physical waste of oil and gas; (2) the inefficient, excessive, or improper use of, or the unnecessary dissipation of, reservoir energy, (3) the locating, spacing, drilling, equipping, operating, or producing of any oil or gas well or wells in a manner which causes or tends to cause reduction in the quantity of oil or gas ultimately recoverable from a pool under prudent and proper operations or which causes or tends to cause unnecessary or excessive surface loss or destruction of oil or gas; and (4) the inefficient storage of oil.

(rr) "Well reworking operations" means physical activities designed to restore the capability of a well to produce oil or gas, or both, in paying quantities, or to increase the capability of a service well (e.g., an injection well, a water source well, or a disposal well) to perform the needed function. Reworking operations include, but are not limited to, efforts to clean out, recomplete a well in a different formation, and the physical penetration of formations to relocate the borehole of a well to a more advantageous drainage point within the same formation.

(ss) "Western Gulf of Mexico" means all OCS areas of the Gulf of Mexico except those deemed by the Director to be adjacent to the State of Florida.

(tt) "Air pollutant" means any airborne agent or combination of agents for which the Environmental Protection Agency (EPA) has established, pursuant to section 109 of the Clean Air Act, national primary and secondary ambient air quality standards.

(uu) "Ambient Air" means that portion of the atmosphere, external to buildings, to which the general public has access.

(vv) "Attainment area" means, for any air pollutant, an area which is shown by monitored data or which is calculated by air quality modeling (or other methods determined by the Administrator of EPA to be reliable) not to exceed any primary or secondary ambient air quality standard, established by EPA in 40 CFR Part 50, for the air pollutant.

(ww) "Best available control technology (BACT)" means an emission limitation based on the maximum degree of reduction for each air pollutant subject to regulation, taking into account energy, environmental and economic impacts and other costs. BACT shall be verified on a case-by-case basis by the Director, and may include reductions achieved through the application of processes, systems, and techniques for the control of each air pollutant.

(xx) "Emission offsets" means emission reductions obtained from facilities, either onshore or offshore, other than the facility or facilities covered by the proposed exploration plan or development and production plan. The provisions of Part IV C. and D. of "Appendix S" of EPA's Emission Offset Interpretive Ruling (44 FR 3274, January 16, 1979) are applicable when determining offsets.

(yy) "Existing facility" is an OCS facility described in an exploration plan or a development and production plan deemed submitted, under § 250.34-1(a) or § 250.34-2(a), prior to June 2, 1980, except for a facility identified for review by the Director under § 250.57-1(b).

(zz) "Facility" means any installation or device permanently or temporarily attached to the seabed on the OCS which is used for exploration, development, and production activities, and which emits or has the potential to emit any air pollutant from one or more sources. All equipment directly associated with the installation or device shall be considered part of a single facility if the equipment is dependent on, or affects the processes of, the installation or device. During production, multiple installations or devices will be considered to be a single facility if the installations or devices are directly related to the production of oil or gas at a single site. Any vessel used to transfer production from an OCS facility shall be considered part of the facility while physically attached to the facility.

(aaa) "Nonattainment area" means, for any air pollutant, an area which is shown by monitored data or which is calculated by air quality modeling (or other methods determined by the Administrator of EPA to be reliable) to exceed any primary or secondary ambient air quality standard, established by EPA in 40 CFR Part 50, for the air pollutant.

(bbb) "Onshore area of a state" means areas of a State landward of the mean high water mark (mean higher high water mark on the Pacific coast).

(ccc) "Projected emissions" means emissions, either controlled or uncontrolled, from a source or sources.

(ddd) "State implementation plan (SIP)" means a plan submitted to and approved by the EPA, pursuant to section 110 of the Clean Air Act, which provides for the implementation, maintenance, and enforcement of the national primary and secondary ambient air quality standards within a State.

(eee) "Source" means an emission point. Several sources may be included within a single facility.

(fff) "Temporary facility" means activities associated with the construction of platforms on the OCS or with facilities related to exploration for or development of OCS oil and gas resources which are conducted in one location for less than three years.

(ggg) "Volatile organic compound (VOC)" means any organic compound which is emitted to the atmosphere as a vapor. The unreactive compounds specified by EPA in Table I of "Recommended Policy on Control of Volatile Organic Compounds" (42 FR 35314, July 8, 1977), as it may be amended, are exempt from the above definition.

(hhh) "Unit agreement" means an agreement providing for the exploration for and development and production of minerals from OCS submerged lands as a single consolidated entity without regard to separate ownerships and for the allocation of costs and benefits on a basis defined in the agreement.

(iii) "Unit area" means the area described in a unit agreement.

(jjj) "Unitization" means the combining or consolidation of separately owned lease interests for the joint exploration or development of a reservoir or potential hydrocarbon accumulation under the terms of a unit agreement.

(kkk) "Unitized substances" means the minerals produced from OCS submerged lands in accordance with a unit agreement.

(lll) "Pooling or drilling agreement" means an agreement providing for the exploration for and development and production of minerals from OCS submerged lands subject to separately owned mineral leases and under which operations are conducted without allocation of production between leases.

[44 FR 61892, Oct. 26, 1979, as amended at 44 FR 15143, Mar. 7, 1980; 45 FR 20464, Mar. 28, 1980; 45 FR 29285, May 2, 1980; 45 FR 37818, June 5, 1980; 49 FR 10670, Mar. 22, 1984]

### § 250.3 Data and information to be made available to the public.

(a) Except as provided in paragraph (c) of this section or in § 252.7 of this chapter, geophysical data, processed geophysical information, and interpreted geological and geophysical information, submitted pursuant to the requirements of this part, shall not be available for public inspection without the consent of the lessee as long as the lease remains in effect, or for a period of 10 years after the date of submission, whichever is less unless the Director determines that earlier release of such information is necessary for the proper development of the field or area.

(b) Except as provided in paragraph (c) of this section or in § 252.7 of this chapter, geological data and analyzed geological information, submitted pursuant to the requirements of this part, shall not be available for public inspection without the consent of the lessee as long as the lease remains in effect or for a period of 2 years after the date of submission, whichever is less, unless the Director determines that earlier release of such information is necessary for the proper development of the field or area.

(c) Geophysical data, processed geophysical information and interpreted geophysical information collected on a lease with high resolution systems (including, but not limited to, bathymetry, side-scan sonar, subbottom profiler and magnetometer) in compliance with stipulations or orders concerning protection of environmental aspects of the lease may be made available to the public 60 days after submittal to the Director. However, unless the lessee can demonstrate to the satisfaction of the Director that release of the information or data would unduly damage the lessee's competitive position, the Director may release the information and data at an earlier time if the Director determines it is needed by affected States to make determinations under § 250.34 of this part.

### § 250.4 Privileged and proprietary data and information to be available to affected States.

(a)(1) At the time of soliciting nominations for the leasing of lands within 3 geographic miles of the seaward boundary of any coastal State, the Director, in coordination with the Director of the Bureau of Land Management and pursuant to the provisions of § 252.7(a)(4) and (b) of this chapter and subsections 8(g) and 26(e) of the Act, shall provide the Governor of the State with:

(i) An identification and schedule of the areas and regions proposed to be offered for leasing;

(ii) All information on the geographical, geological, and ecological characteristics of the areas and regions proposed to be offered for leasing;

(iii) An estimate of the oil and gas reserves in the areas proposed for leasing; and

(iv) An identification of any field, geological structure, or trap located within 3 miles of the seaward boundary of the State.

(2) The manner and form in which the information described in paragraph (a)(1) of this section shall be transmitted to the State shall be determined on a case-by-case basis in discussions between the Director, the Director of the Bureau of Land Management, and the Governor of the State.

(b) After the receipt of nominations for any area of the OCS within 3 geographic miles of the seaward boundary of any coastal State and tentative tract selection in accordance with the provisions of 43 CFR Parts 3313 and 3314, the Director shall, in consultation with the Governor of the State or a duly authorized agent of the Governor, determine whether any tracts being given further consideration for leasing may contain one or more oil or gas reservoirs underlying both the OCS and lands subject to the jurisdiction of the State.

(c) Knowledge obtained by a State official who receives information or data under paragraphs (a) and (b) of this section shall be subject to the requirements and limitations of the Freedom of Information Act (5 U.S.C. 552) and the implementing regulations (43 CFR Part 2), the Act, the regulations contained in this Part 250 (Oil and Gas and Sulphur Operations in the Outer Continental Shelf), the regulations in 30 CFR Part 251 (Geological and Geophysical Explorations of the Outer Continental Shelf), and the regulations contained in 30 CFR Part 252 (Outer Continental Shelf Oil and Gas Information Program).

[44 FR 61892, Oct. 26, 1979; 45 FR 20464, Mar. 28, 1980]

### § 250.5 Effect of regulations on provisions of section 6 leases.

(a) As provided in subsection 6(b) of the Act, the regulations in this part supersede the provisions of any lease which is determined to meet the requirements of subsection 6(a) of the Act, to the extent that they cover the same subject matter, with the following exceptions: the provisions of the lease as to area, rentals, and minerals covered; the royalties payable under the lease (subject to the provisions of paragraphs 6(a)(8) and 6(a)(9) of the Act); and the term of the lease [subject to the provisions of paragraph 6(a)(10) of the Act and, as to sulphur, subject to the provisions of paragraph 6(b)(2) of the Act] shall continue in effect and, in the event of any conflict or inconsistency, shall take precedence over the regulations in this part.

(b) A lease that meets the requirements of subsection 6(a) of the Act shall also be subject to the mineral leasing regulations applicable to the OCS as well as the regulations relating to geophysical and geological exploratory operations and to pipeline rights-of-way in the OCS to the extent that those regulations are not contrary to or inconsistent with the provisions of the lease relating to the area covered, the minerals covered, the rentals payable, the royalties payable, and the term of the lease.

## JURISDICTION AND FUNCTIONS

### § 250.10 Jurisdiction.

(a) Subject to the supervisory authority of the Secretary, drilling and production operations; handling and measurement of production; determination and collection of rental, royalty, and net profit shares; and, in general, all operations and activities conducted pursuant to a lease by or on behalf of a lessee are subject to the regulations in this part and are under the jurisdiction of the Director.

(b) In the exercise of that jurisdiction, the Director is authorized and directed to act upon the requests, applications, and notices submitted under the regulations in this part, and to require compliance with applicable laws, regulations, lease terms, and OCS Orders so that all operations are conducted in a manner which will protect the natural resources of the OCS. The Director may issue OCS Orders to implement the requirements of the regulations in this part. The Director may issue other orders, either written or oral, to govern lease operations. Oral orders shall be confirmed in writing as promptly as possible. The Director may issue other orders and field rules to govern the development and method of production of a pool, field, or area. Prior to the issuance of OCS Orders and other orders and field rules, the Director may consult with, and receive comments from, lessees, operators, and other interested parties. Before permitting operations on the leased area, the Director may require evidence that a lease is in good standing, that the lessee is authorized to conduct operations, and that an acceptable bond has been filed.

### § 250.11 Functions.

(a) The Director, in accordance with the regulations in this part, shall:

(1) Regulate all operations conducted under a lease or permit and shall issue and amend OCS Orders and other orders and field rules as may be necessary and proper in order to su-

pervise operations and to prevent harm or damage to, or waste of, any natural resource (including any mineral deposits in areas leased or not leased), any life (including fish and other aquatic life), property, or the marine, coastal, or human environment.

(2) Require on all new and, whenever practicable, existing drilling and production operations (including the construction and operation of platforms and pipelines) the use of the best available and safest technologies which the Director determines to be economically feasible, wherever failure of equipment would have a significant effect on safety, health, or the environment, except where the Director determines that the incremental benefits are clearly insufficient to justify the incremental costs of utilizing such technologies.

(3) Schedule an onsite inspection, at least once a year, of each facility on the OCS which is subject to any environmental or safety regulations promulgated pursuant to the Act. The inspection shall include all environmental protection equipment and all safety equipment designed to prevent or ameliorate blowouts, fires, spillages, or other major accidents. A lessee shall, on request by the Director, furnish food, quarters, and transportation for Federal representatives to inspect its facilities. Upon request, the lessee will be reimbursed by the United States for the actual costs which it incurs as a result of its providing food, quarters, and transportation for a Federal representative's stay of more than 10 hours.

(4) Conduct periodic onsite inspections without advance notice to the operator of such facility to assure compliance with applicable regulations.

(5) Cooperate with and, when in the Director's judgment it is necessary, consult with or solicit advice from relevant Departments and Agencies of the Federal Government and affected States, executives of affected local governments, and other interested parties.

(6) Identify for those activities under the jurisdiction of the Director those States which are deemed to be affected States as defined in § 250.2(c) of this part.

(b) The Director may prescribe or approve, in writing or orally with subsequent written confirmation, departures from the requirements of OCS Orders and other orders and field rules issued pursuant to paragraph (a)(1) of this section, when such departures are necessary for the proper control of a well, the facilitation of the proper development of a lease, the conservation of natural resources, the protection of life (including fish and other aquatic life) property, or the marine, coastal or human environment.

[44 FR 61892, Oct. 26, 1979; 45 FR 20464, Mar. 28, 1980]

### § 250.12 Suspension of operations and lease cancellation.

(a)(1)(i) The Director may suspend or temporarily prohibit production or any other operation or activity when the lessee fails to comply with a provision of the Act or any other applicable law, a provision of a lease or permit, a provision of these and other applicable regulations, OCS Orders, or any other written orders or field rules including orders for the filing of reports and well records or logs within the time specified.

(ii) The Director may suspend or temporarily prohibit production or any other operation or activity pursuant to any lease issued or maintained under the Act when the Director determines that there is a threat of serious, irreparable, or immediate harm or damage to life (including fish and other aquatic life), to property, to any mineral deposits (in areas leased or not leased), or to the marine, coastal, or human environment.

(iii) The Director may, pursuant to the provisions of subsections 5(a) and 12 (c) and (d) of the Act, suspend or temporarily prohibit production or any other operations or activities when such action is in the interest of national security or defense.

(iv) The Director may suspend or temporarily prohibit production or any other operation or activity to facilitate the preparation of an environmental impact statement or environmental analysis, or for any other purpose necessary for the implementation of the National Environmental Policy Act.

(2) The Director may suspend or temporarily prohibit production or any other operation or activity separately as to oil or gas, or as to any other mineral designated in the suspension order as to all or any portion of the leasehold.

(3) The Director shall issue orders of suspension or temporary prohibition pursuant to this subsection either in writing or orally with subsequent written confirmation.

(b)(1) Upon the request of a lessee, the Director may suspend or temporarily prohibit production or any other operation or activity pursuant to a lease when the Director determines that the suspension or temporary prohibition is in the national interest and will—

(i) Facilitate proper development of a lease;

(ii) Allow for the construction of, or for the negotiation for the use of, transportation facilities;

(iii) Facilitate the installation of equipment the Director determines is necessary for safety or environmental reasons; or

(iv) Allow for inordinate delays encountered by the lessee in obtaining any required permit or consent from a Federal, State, or local Government authority, including administrative or judicial challenges or appeals.

(2) The lessee must submit, with a request for a suspension, the reasons for requesting the suspension, a schedule of work leading to the expeditious initiation or restoration of production or any other operation or activity, and any other information the Director may require.

(3) In determining whether a suspension of production or any other operation or activity is in the national interest, the Director shall consider:

(i) All known significant national benefits and national costs;

(ii) Whether environmental problems or other unforeseen conditions necessitate a significant halt in production or any other operation or activity; and

(iii) Whether, during the primary term, the lessee has been prompt and efficient in the exploration or in attempts to explore the lease.

(4) A suspension of production or any other operation or activity may be granted under this subsection for periods of time each of which must not exceed 5 years.

(c) For leases in the Gulf of Mexico and as provided for by lease stipulation, the Director shall suspend or temporarily prohibit production or any other operation or activity pursuant to a lease when such lease is in water depths of 400 to 900 meters, provided that the suspension or temporary prohibition shall be for such period of time as is necessary to complete the activities described in a development and production plan approved by the Regional Supervisor in accordance with § 250.34-2. However, in no case shall the suspension or temporary prohibition be for a period of time which exceeds 5 years.

(d)(1) When the Director suspends or temporarily prohibits production or any other operation or activity pursuant to paragraph (a), (b), or (c) of this section, the term of the lease or any initial period in which to commence an exploratory well pursuant to § 256.37(a)(2) shall be extended for a period of time equivalent to the period that the suspension or prohibition is in effect. However, no lease or period shall be extended pursuant to this subsection when the Director's suspension or temporary prohibition is the result of the lessee's or permittee's gross negligence or of a knowing and willful violation of a provision of the Act, of the regulations, or of a lease or permit.

(2) Any suspension may be terminated at any time when the Director determines that the circumstances which justified the granting of the suspension no longer exist. When the Director terminates a suspension prior to the end of the period of time for which the suspension was originally granted, the Director shall specify in the notice of termination the reason(s) for the termination and the effective date for the termination of the suspension.

(3) Any suspension shall terminate automatically upon the commencement of production or any other suspended operation or activity.

(e)(1) When the Director suspends or temporarily prohibits production or any other operation or activity pursuant to paragraph (a)(1)(ii) of this section, the Director may require the lessee to conduct (a) site-specific study or studies to identify and evaluate the cause(s) of the hazard(s) generating the suspension, the potential damage from the hazard(s), and the measures available for mitigating the hazard(s). The content and scope of the study or studies shall be approved or prescribed by the Director. Prior to approval of a study program, the Director may invite comments and recommendations, on an informal basis, from interested Federal Departments and Agencies, affected States and local governments, and other interested parties. The lessee shall furnish copies and all results of the study or studies to the Director. The cost of the study or studies shall be borne by the lessee unless the Director arranges for the cost of the study or studies to be borne by a party other than the lessee. The lessee may be reimbursed for the cost of information and data as otherwise authorized in this Part of the regulations. The Director shall make such results available to interested parties and to the public.

(2) On the basis of the results of the study or studies conducted in accordance with paragraph (e)(1) of this section and other information available to and identified by the Director, the Director will submit a report to the Secretary. The report shall indicate the damage or threat of damage being avoided and shall recommend mitigating measures, if any, that may successfully alleviate such damage or threat of damage. On the basis of the Director's report and recommendations, and other information or advice the Secretary deems and identifies as relevant, the Secretary shall require the lessee to take appropriate measures to mitigate or avoid the damage or potential damage, which resulted in the suspension or temporary prohibition of production or of any other operation or activity, as a condition for permitting the resumption of exploration, development, or production activities on the lease. The lessee shall submit, when deemed appropriate by the Director, a revised exploration plan or a revised development and production plan in accordance with § 250.34 of this part. The revised plan shall incorporate the mitigating measures required by the Secretary. In choosing between alternative mitigating measures, the Secretary will balance the cost of the required measures against the reduction or potential reduction in damage or threat of damage to life (including fish and other aquatic life), to property, to any mineral deposits (in areas leased or not leased), to the national security or defense, or to the marine, coastal, or human environment.

(3) If the lessee cannot comply with the conditions established by the Secretary for ending the suspension or temporary prohibition of production or any other operation or activity on the lease, or if the Secretary determines that adequate protection from serious, irreparable, or immediate harm or damage to life (including fish and other aquatic life), to property, to any mineral deposits (in areas leased or not leased), to the national security or defense, or to the marine, coastal, or human environment will not be provided by the mitigating measures, the Secretary shall leave the suspension in effect.

(4) The Secretary may terminate a suspension and cancel a lease in accordance with the provisions of this subsection when:

(i) Continued activity pursuant to the lease or permit would probably cause serious harm or damage to life (including fish and other aquatic life), to property, to any mineral deposits (in areas leased or not leased), to the national security or defense, or to the marine, coastal, or human environment;

(ii) The threat of harm or damage will not disappear or decrease to an acceptable extent within a reasonable period of time; and

(iii) The advantages of cancellation outweigh the advantages of continuing the lease or permit in force.

(5) Cancellation of a lease pursuant to this subsection is in the Secretary's discretion, but cannot occur until the operation or activity in question under the lease or permit has been under suspension or temporary prohibition, with due extension of the term of the lease, continuously for a period of 5 years or, upon the request of the lessee, for a lesser period of time. If a lease is cancelled under this section, the lessee shall be entitled to compensation pursuant to the provisions of paragraph (h) of this section.

(6) Cancellation of a lease pursuant to this subsection will become effective only after the affected lessee has been given notice and an opportunity for a hearing.

(f) Whenever an exploration plan is disapproved because the Director determines that approval of the activities called for in the plan would probably cause serious harm or damage to life (including fish and other aquatic life), to property, to any mineral deposits (in areas leased or not leased), to the national security or defense, or to the marine, coastal, or human environment, and the proposed activity cannot be modified to avoid these dangers, the Secretary may, once the primary lease term has been extended continuously for a period of 5 years following the disapproval, or, upon request of the lessee, at an earlier time, terminate the suspension or temporary prohibition and cancel the lease, and the lessee shall be entitled to compensation pursuant to paragraph (h) of this section.

(g)(1) Where a development and production plan is submitted before the subsequent approval of a coastal zone management program for an affected State, pursuant to the Coastal Zone Management Act, and the plan is disapproved because the lessee does not receive concurrence by such State pursuant to section 307(c)(3)(B) (i) or (ii) of the Coastal Zone Management Act, and the Secretary of Commerce does not make the finding authorized by section 307(c)(3)(B)(iii) of the Coastal Zone Management Act; or if the Secretary makes findings pursuant to § 250.34-2(g)(2)(iii)(C):

(i) The term of the lease shall be duly extended and, at any time within 5 years after such disapproval, the lessee may reapply for approval of the same or a modified plan, and the Director shall approve, disapprove, or require modification of the plan in accordance with the provisions of 30 CFR 250.34-2; and

(ii) Upon expiration of the 5-year period described in paragraph (g)(1)(i) of this section or, at the Secretary's discretion, at an earlier time upon request of the lessee, if the Director has not approved a plan, the Secretary shall cancel the lease and the lessee shall be entitled to compensation pursuant to paragraph (h) of this section.

(iii) The Secretary may, at any time within the 5-year period described in paragraph (g)(1)(i) of this section, require the lessee to submit a development and production plan for approval, disapproval, or modification. If the lessee fails to submit a required plan expeditiously and in good faith, the Secretary shall find that the lessee has not been prompt and efficient in pursuing obligations under the lease, and, notwithstanding the provisions of paragraph (g)(1)(i) of this section, the Secretary shall immediately initiate procedures to cancel the lease under the provisions of subsection 5(c) of the Act, and the lessee shall not be entitled to compensation.

(2) Where a development and production plan is submitted after approval of a State's coastal zone management program pursuant to the Coastal Zone Management Act, and the plan is disapproved because the lessee does not receive concurrence by the State pursuant to section 307(c)(3)(B) (i) or (ii) of the Coastal Zone Management Act, and the Secretary of Commerce does not make the finding authorized by section 307(c)(3)(B)(iii) of the Coastal Zone Management Act, the lessee shall not be entitled to compensation when the lease expires.

(3) Whenever the owner of a lease fails to submit a development and production plan in accordance with 30 CFR 250.34-2, or fails to comply with an approved plan, the lease may be cancelled in accordance with sections 5(c) or (d) of the Act. Cancellation of a lease because of failure to submit a plan or to comply with an approved

plan, including required modifications or revisions, shall not entitle the lessee to any compensation.

(4) Whenever the owner of a nonproducing lease fails to comply with any of the provisions of the Act, or of the lease, or of the regulations issued under the Act, and the default continues for a period of 30 days after the mailing of a notice by registered letter to the lease owner, the Secretary may cancel the lease pursuant to subsection 5(c) of the Act, and the lessee shall not be entitled to compensation.

(5) Whenever the owner of any producing lease fails to comply with any of the provisions of the Act, of the lease, or of the regulations issued under the Act, the Secretary may cancel the lease pursuant to subsection 5(d) of the Act, and the lessee shall not be entitled to compensation.

(6) Whenever a development and production plan is disapproved because of a failure to demonstrate compliance with the requirements of the Act or other applicable Federal law, including the air quality regulations prescribed by the Secretary pursuant to section 5(a)(8) of the Act, the lessee shall not be entitled to compensation when the lease expires.

(h) Cancellation of a lease under paragraphs (e) and (f) and (g) of this section shall entitle the lessee to receive such compensation as the lessee shows the Director as being equal to the lesser of:

(1) The fair value of the cancelled rights as of the date of cancellation, taking account of both anticipated revenues from the lease and anticipated costs, including costs of compliance with all applicable regulations and operating orders, liability for cleanup costs or damages, or both, in the case of an oilspill, and all other costs reasonably anticipated on the lease; or

(2) The excess, if any, over the lessee's revenues from the lease (plus interest thereon from the date of receipt to date of reimbursement) of all consideration paid for the lease and all direct expenditures made by the lessee after the date of issuance of the lease and in connection with exploration or development, or both, pursuant to the lease (plus interest on this consideration and expenditures from date of payment to date of reimbursement), except that:

(i) With respect to leases issued before enactment of the Act, compensation shall be equal to the amount specified in paragraph (h)(1) of this section; and

(ii) In the case of jointly held leases which are cancelled due to the failure of one or more partners to exercise due diligence, the innocent parties shall have the right to seek damages for losses from the responsible party or parties and the right to acquire the interests of the negligent party or parties and be issued the lease in question.

[44 FR 61892, Oct. 26, 1979; 45 FR 20464, Mar. 28, 1980, as amended at 47 FR 30057, July 12, 1982; 49 FR 17450, Apr. 24, 1984; 49 FR 26225, June 27, 1984; 49 FR 36500, Sept. 18, 1984; 50 FR 49043, Nov. 29, 1985]

### § 250.13 Temporary approvals.

The Director may give temporary oral approvals whenever the regulations in this part, other than those contained in § 250.34, require a lessee to obtain the Director's approval before commencing an operation or activity. Oral approvals shall be confirmed immediately in the manner otherwise required by the regulations in this part.

### § 250.15 Drilling and abandonment of wells.

(a) The Director shall require that drilling and any other operation or activity pursuant to a lease be conducted in accordance with a plan prescribed or approved by the Director in accordance with the regulations in this part. Whenever practicable, the Director shall require the plugging and abandonment of any well which the Director determines is no longer useful.

(b) Upon failure to secure compliance with the requirements of paragraph (a) of this section, the Director may perform the work at the expense of the lessee.

### § 250.16 Well potentials and permissible flow.

The lessee shall produce any oil or gas obtained pursuant to an approved development and production plan, at rates consistent with any applicable rule or order.

### § 250.17 Well spacing.

The Director is authorized to approve well spacing programs necessary for the proper development of a lease giving consideration to, among other factors, the following: the location of drilling platforms; the geological and other reservoir characteristics of the field; the number of wells that can be economically drilled; the protection of correlative rights; and minimizing the unreasonable interference with other uses of the OCS.

### § 250.18 Right of use and easement.

(a)(1) In addition to the rights and privileges granted to a lessee under any lease issued or maintained under the Act, the Director may grant a lessee, subject to conditions prescribed by the Director, a right of use and easement to construct and maintain platforms, artificial islands, and all installations and other devices which are permanently or temporarily attached to the seabed on the OCS, and which are used for carrying out exploration, development, and production activities, including but not limited to drilling, producing, treating, handling, and storing production, and the housing of personnel engaged not only in operations and activities on the lease on which the platform, artificial island, or installation or other device is situated, but for the conduct of operations on any other lease.

(2) A right of use and easement shall be exercised only in a manner which does not interfere unreasonably with operations of any lessee under a lease.

(3) A right of use and easement shall be exercised in a manner which assures protection of the environment through the use of the best available and safest technologies pursuant to subsection 21(b) of the Act.

(4) A right of use and easement, if on an area subject to any lease issued or maintained under the Act, shall be granted only after the holder of the lease has been notified by the applicant and afforded an opportunity to comment on the application.

(b) The Director may approve the design, fabrication, and plan of installation of all platforms, artificial islands, and installations, and other devices permanently or temporarily attached to the seabed on the OCS as a condition of the granting of a right of use and easement under paragraph (a) of this section, or as authorized under any lease issued or maintained under the Act.

(c) Once a right of use and easement has been exercised, the right shall continue, even beyond the termination of any lease on which it may be situated, as long as the Director determines that the right of use and easement is maintained by the holder of the right and serves the purpose specified in the grant. If the grant extends beyond the termination of any lease on which the right of use and easement may be situated, the rights of all subsequent lessees shall be subject to such right of use and easement.

(d) Upon termination by the Director of a right of use and easement, the grantee shall place in condition, remove, or otherwise dispose of all platforms, artificial islands and all installations and other devices permanently or temporarily attached to the seabed on the OCS, and pipelines, and restore the premises to the satisfaction of the Director. However, a pipeline or other facility may be abandoned in place as long as the Director determines that it does not constitute a hazard to navigation or commercial fishing. The abandonment of a pipeline or other facility is to be performed in accordance with a plan prescribed or approved by the Director.

[44 FR 61892, Oct. 26, 1979; 45 FR 20464, Mar. 28, 1980, as amended at 45 FR 74471, Nov. 10, 1980]

### § 250.19 Access to platforms.

The Director is authorized to require that lessees maintaining platforms, artificial islands, and installations and other devices permanently or temporarily attached to the seabed on the OCS which are equipped with helicopter landing sites and refueling facilities, provide the use of those facilities for helicopters employed by the Department of the Interior in the supervision of operations on the OCS. The lessee shall be reimbursed for costs which the Director determines were justifiably incurred in connection with the use of those facilities by helicopters employed by the Department of the Interior.

[44 FR 61892, Oct. 26, 1979; 45 FR 20464, Mar. 28, 1980]

### § 250.20 Pipeline approval.

The director shall approve the design, fabrication, and the plan of installation of OCS pipelines that are wholly contained within the boundaries of a single lease, the boundaries of unitized leases, or the boundaries of contiguous (not cornering) leases of the same owner or operator.

[45 FR 74471, Nov. 10, 1980]

## REQUIREMENTS FOR LESSEES

### § 250.30 Lease provisions, regulations, waste, damage, and safety.

(a) The lessee shall comply with the provisions of applicable laws, regulations, the lease, OCS Orders, and other written or oral orders of the Director. All oral orders shall be effective when issued and will be confirmed in writing as promptly as possible.

(b) The lessee shall conduct operations on a lease in a manner that does not, in the opinion of the Director, cause or threaten to cause waste or threaten harm or damage to life (including fish and other aquatic life), to property, to any mineral deposits (in areas leased or not leased), to the national security or defense, or to the marine, coastal, or human environment, and the lessee shall take all necessary precautions to prevent waste, harm, or damage.

(c) The lessee shall use, on all new drilling and production operations and, whenever practicable, on existing operations, the best available and safest technologies that the Director determines to be economically feasible, wherever failure of equipment would have a significant effect on safety, health, or the environment, unless the Director determines that the incremental benefits are clearly insufficient to justify the incremental costs of utilizing such technologies.

[44 FR 61892, Oct. 26, 1979; 45 FR 20464, Mar. 28, 1980]

### § 250.31 Designation of operator.

In all cases where operations are not conducted by the owner of record, but are conducted under authority of an unapproved operating agreement, assignment, or other arrangement, a "designation of operator" shall be submitted to the Director, prior to the commencement of operations, in a manner and form approved by the Director. This designation will be accepted as authority for the operator, or the operator's local representative, to act on behalf of the lessee and to fulfill the lessee's obligations under the Act and the regulations in this part. All changes of address and any termination of the authority of the operator shall be reported immediately, in writing, to the Director. In case of a termination or in the event of a controversy between the lessee and the designated operator, both the lessee and the operator will be required to protect the interests of the lessor.

### § 250.32 Local agent.

When required by the Director, the lessee shall designate a representative empowered to receive notices and comply with orders of the Director issued pursuant to the regulations in this part.

### § 250.33 Drilling and producing obligations.

(a) The lessee shall file all plans and drill and produce all wells that the Director may require in order to insure the prompt and efficient exploration for, and development and production of, oil and gas from the lease.

(b) The lessee shall drill and produce the wells the Director determines are necessary to protect the lessor from loss by reason of production on other properties, or, with the consent of the Director, shall pay a sum determined by the Director as adequate to compensate the lessor for the lessee's failure to drill and produce any well. Payment of that sum shall be considered as the equivalent of production in paying quantities for the purpose of extending the lease term.

(c) The lessee shall pay the rental and the amount or value of production determined by the Director as accruing to the lessor as royalty or net profit share.

### § 250.34 Exploration, development, and production activities.

[44 FR 53693, Sept. 14, 1979]

### § 250.34-1 Exploration plan.

(a)(1) No exploration activities, except for preliminary activities, may be commenced or conducted on any leased area except in accordance with an exploration plan approved by the Director. For purposes of this section, preliminary activities are geological, geophysical, and other surveys necessary to develop a comprehensive exploration plan. Such preliminary activities are those which do not result in any physical penetration of the seabed of greater than 300 feet of unconsolidated formations, or 50 feet of consolidated formations, and which do not result in any significant adverse impact on the natural resources of the Outer Continental Shelf (OCS). A proposed exploration plan may apply to one or more leases held by an individual lessee, or may be submitted by a group of lessees acting under an approved unitization, pooling, or drilling agreement. An exploration plan shall include:

(i) The proposed type and sequence of exploration activities to be undertaken together with a tentative timetable for their performance from commencement to completion;

(ii) A description of any drilling vessel, platform, or other installation or device to be permanently or temporarily attached to the seabed indicating the important features thereof with special attention to safety features and pollution-prevention and control features including oil spill containment and cleanup plans;

(iii) The types of geophysical equipment to be utilized;

(iv) The general location of each proposed exploratory well, including surface and projected bottom hole locations;

(v) Current structure maps and, as appropriate, schematic cross sections showing expected depths of marker formations; and

(vi) Such other relevant information and data as the Director may require.

(2)(i) Except as provided in paragraph (a)(2)(ii) of this section, at the same time as a lessee submits an exploration plan, an Environmental Report (Exploration) shall be submitted pursuant to the provisions of § 250.34-3(a). The report will not be considered part of the exploration plan; however, the report shall accompany the plan through all review processes.

(ii) A lessee submitting an exploration plan for leases in the western Gulf of Mexico is not required to submit an Environmental Report, unless the proposed exploration activities would affect a land use or water use in the coastal zone of a State with a coastal zone management program approved pursuant to section 306 of the Coastal Zone Management Act. Also, the Director may request specific environmental information to make the findings required under applicable law, including but not limited to the Act and the National Environmental Policy Act.

(3)(i) For leases issued with an initial period of 5 years, the leases shall submit an exploration plan prior to the end of the fourth lease year, unless the Director authorizes submission of an exploration plan at a later date, but before expiration of the lease. A request to the Director for permission to submit an exploration plan after the fourth anniversary of the lease date shall be supported by a general statement of exploration intentions. For leases issued with an initial period of more than 5 years, the lessee shall submit an exploration plan within the period of time specified at the time the tracts are offered for leasing. These requirements shall apply only to leases issued after December 13, 1979.

(ii) For leases in 400 to 900 meters of water issued with an initial term of 8 years, no deadline is specified for submittal of an exploration plan; however, to avoid lease cancellation, an exploratory well must be commenced before the end of the fifth year of the initial term.

(4) The Director may require that an exploration plan be accompanied by a general statement of development and production intentions. The general

statement of development and production intentions shall be prepared and submitted in a manner and form prescribed by the Director, and the statement shall be for planning purposes only and shall not be binding on any party.

(5) The lessee shall indicate which portions of the exploration plan the lessee believes are exempt from disclosure under the Freedom of Information Act (5 U.S.C. 552) and the implementing regulations (43 CFR Part 2). The lessee shall include a written discussion in the plan of the general subject matter of the deleted portions for transmittal to the recipients of copies of a plan identified in § 250.34-1(b)(1).

(6) An exploration plan shall not be deemed submitted until:

(i) The Director has determined that the plan and accompanying Environmental Report are complete and contain the information required by §§ 250.34-1(a) and 250.34-3(a). The determination of whether a plan and accompanying Environmental Report are complete shall be made within 10 working days after the filing of the plan.

(ii) The plan is accompanied by a certificate of coastal zone consistency as provided in 15 CFR Part 930 whenever the activities described would affect any land use or water use in the coastal zone of any State with a coastal zone management program, approved pursuant to section 306 of the Coastal Zone Management Act.

(iii) The Director has been given the number of copies of a complete exploration plan and accompanying Environmental Report that the Director has determined is necessary for distribution pursuant to paragraph (b)(1) of this section. The Director shall advise the lessee of the number of copies that are needed for distribution.

(b)(1) Within 2 working days after the date an exploration plan has been deemed submitted, the Director shall transmit a copy of the plan, except for those portions determined to be exempt from disclosure under the Freedom of Information Act (5 U.S.C. 552) and the implementing regulations (43 CFR Part 2), and the accompanying Environmental Report to the Governor of each affected State, except as provided in paragraph (b)(2) of this section, and the coastal zone management agency of each affected State that has a coastal zone management program approved pursuant to section 306 of the Coastal Zone Management Act. The Director shall also make copies of the exploration plan and accompanying Environmental Report available to any appropriate Federal agency, interstate regional entity, and the public in accordance with established Departmental practices and procedures.

(2) The Governor of an affected State adjacent to the western Gulf of Mexico that does not have a coastal zone management program approved pursuant to section 306 of the Coastal Zone Management Act may receive copies of exploration plans by submitting to the Director a written request for the documents. The Director shall notify the appropriate lessees immediately upon receipt of such a request.

(3) When it is determined that the activities proposed in an exploration plan will affect any land use or water use in the coastal zone of a State with a coastal zone management program approved pursuant to section 306 of the Coastal Zone Management Act, the plan will be processed in accordance with the regulations in this section and the regulations governing Federal Coastal Zone Management Consistency Procedures (15 CFR Part 930).

(c) The Director shall review the environmental impacts of the activities described in the exploration plan pursuant to the provisions of § 250.34-4.

(d) In the evaluation of an exploration plan, the Director shall consider timely received written comments from the Governor of an affected State, whether or not the State has a coastal zone management program approved pursuant to section 306 of the Coastal Zone Management Act. The Director may consult directly with affected States regarding matters contained in the comments.

(e)(1) In the evaluation of an exploration plan, the Director shall consider whether the plan is consistent with:

(i) The provisions of the lease;

(ii) The provisions of the Act; and

(iii) The provisions of the regulations prescribed under the Act, including air quality regulations prescribed by the Secretary pursuant to section 5(a)(8) of the Act and environmental, safety, and health requirements.

(2) Within 30 days of submission of a proposed exploration plan, the Director shall:

(i) Approve any plan which is consistent with the criteria in paragraphs (e)(1) (i), (ii), and (iii) of this section;

(ii) Require the lessee to modify any plan which is inconsistent with paragraph (e)(1) (i), (ii), or (iii) of this section; or

(iii) Disapprove any plan if it is determined that a proposed activity under the plan would probably cause serious harm or damage to life (including fish and other aquatic life), to property, to natural resources of the OCS including any mineral deposits (in areas leased or not leased), to the national security or defense, or to the marine, coastal, or human environment and that the proposed activity cannot be modified to avoid the condition(s).

(3) The Director shall notify the lessee in writing of the reason(s) for disapproving an exploration plan or for requiring modification of a plan and the conditions that must be met for plan approval.

(f) The lessee may resubmit an exploration plan, as modified, to the Director. Within 30 days of resubmission, the Director shall approve, disapprove, or require modification of the modified plan based upon the criteria in paragraphs (e)(1) (i), (ii), and (iii) of this section.

(g) When a State objects to a lessee's coastal zone consistency certification, the lessee shall modify the plan to accommodate the State's objection(s) and resubmit the plan to: (1) The Director for review pursuant to the criteria in paragraphs (e)(1) (i), (ii), and (iii) of this section; and (2) through the Director, to the State for review pursuant to the Coastal Zone Management Act and the implementing regulations (15 CFR 930.83 and 930.84). Alternatively, the lessee may appeal the State's objection to the Secretary of Commerce pursuant to the procedures described in section 307 of the Coastal Zone Management Act and the implementing regulations (Subpart H of 15 CFR Part 930). The Director shall approve or disapprove a plan as resubmitted within 30 days of the resubmission date.

(h) When the Director requires modification to a resubmitted exploration plan as provided in paragraph (f) of this section, the Director may waive procedural requirements as he considers appropriate.

(i) If the Director disapproves an exploration plan, pursuant to paragraph (e)(2)(iii) of this section, the Secretary may, subject to the provisions of section 5(a)(2)(B) of the Act and the implementing regulations (30 CFR 250.12 and 43 CFR 3320.2), cancel the lease(s), and the lessee shall be entitled to compensation in accordance with section (5)(a) of the Act and the implementing regulations (30 CFR 250.12 and 43 CFR 3320.2).

(j)(1) The Director shall periodically review the activities being conducted under an approved exploration plan. The frequency and extent of the Director's review shall be based upon the significance of any changes in available information and in other onshore or offshore conditions affecting or affected by exploration activities being conducted pursuant to the plan. If the review indicates that the plan should be revised to meet the requirements of this part, the Director shall require such revision pursuant to paragraph (j)(2) of this section.

(2) Proposals to revise an approved exploration plan, whether initiated by the lessee or ordered by the Director, shall be submitted to the Director for approval in the same manner as, and with the same information required for, a new exploration plan. When the Director determines that a proposed revision could result in a significant change in the impacts previously identified and evaluated, the revision shall be subject to all of the procedures in this section except those pertaining to the consistency requirements of the Coastal Zone Management Act. When the Director determines that a proposed revision calls for additional permits, the proposed revision may be subject to all of the procedures in this section. Information copies of all revi-

sions to an approved exploration plan will be forwarded by the Director to the recipients of the previously approved plan.

(k) In order to ensure that activities to be carried out under a proposed exploration plan and activities being carried out under an approved exploration plan are carried out in a safe and environmentally acceptable manner, the Director may authorize or direct the lessee to conduct geological, geophysical, or other surveys that the Director determines are necessary for the evaluation of such activities. The lessee shall provide to the Director, upon request, copies of any data or information obtained as a result of those surveys.

(l) The lessee may not drill any well until the Director's approval of an application for permit to drill, filed in accordance with the requirements of 30 CFR 250.36, has been received. The Director shall not approve any permit until all affected States with approved coastal zone management programs have concurred or have been conclusively presumed to concur with the applicant's coastal zone consistency certification accompanying a plan; or the Secretary of Commerce has made the finding authorized by section 307(c)(3)(B)(iii) of the Coastal Zone Management Act. Permit applications must conform to the activities described in detail in the related approved exploration plan and shall not be subject to a separate State coastal zone consistency review.

(m) Nothing in this section shall be viewed as limiting the lessee's responsibility to take appropriate measures to meet emergency situations. In such situations, the Director may approve or require departures from an approved exploration plan.

[44 FR 53693, Sept. 14, 1979; 45 FR 20464, Mar. 28, 1980, as amended at 47 FR 25331, June 11, 1982; 48 FR 55567, Dec. 14, 1983; 50 FR 49043, Nov. 29, 1985]

### § 250.34-2 Development and production plan.

(a)(1) Except as provided in paragraph (a)(2) of this section, no development or production activities may be commenced or conducted on any leased area, except in accordance with a development and production plan approved by the Director. A plan may apply to one or more leases held by an individual lessee or may be submitted by a group of lessees acting under an approved unitization, pooling, or drilling agreement. A plan shall provide for the effective and efficient development and production of all known accumulations of hydrocarbons found on the leasehold(s) that are capable of production in paying quantities. A development and production plan shall include:

(i) A description of the specific work to be performed, including all the development and production activities that the lessee(s) propose(s) to undertake during the time period covered by the plan and all activities to be undertaken up to and including the commencement of sustained production.

(ii) A description of any drilling vessels, platforms, pipelines, or other facilities and operations located on the OCS which are proposed or known by the lessee (whether or not owned or operated by the lessee) to be directly related to the proposed development, including the location, size, design, and important features of the facilities and operations (with special attention to safety and pollution-prevention and control features including oil spill containment and cleanup plans) and the labor, material, and energy requirements associated with the facilities and operations;

(iii) The location of each well, including the surface and projected bottom hole locations;

(iv) Current interpretations of all available relevant geological and geophysical data, including structure maps and schematic cross sections of productive formations;

(v) A description of the environmental safeguards to be implemented in the course of development and production operations under the plan, together with a discussion of how such safeguards are to be implemented;

(vi) All safety standards to be met and the safety features to be utilized in order to meet those standards;

(vii) An expected rate of development and production and a time schedule for the performance of activities from commencement to completion of both, and

(viii) Such other relevent information and data as the Director may require.

(2)(i) Development and production plans will not be required for leases in the western Gulf of Mexico. For these leases, the Director may require, by notice to lessees, submission of the information in those parts of paragraphs (a)(1) (i) through (viii) of this section that are necessary to assure conformance with the Act, other laws, applicable regulations, lease provisions, or as otherwise needed by the Director to carry out his functions and responsibilities. Any information required by the Director under this subsection shall be submitted in a form and manner prescribed by the Director for a Development Operations Coordination Document.

(ii) Any information required by the Director for leases described in paragraph (a)(2)(i) of this section shall be considered a development and production plan for the purpose of any references in any law, regulation, lease provision, agreement, or other document referring to the preparation or submission of a plan.

(3)(i) Except as provided in paragraph (a)(3)(ii) of this section, at the same time the lessee submits a development and production plan to the Director, an Environmental Report (Development/Production) shall also be submitted pursuant to the provisions of § 250.34-3(b). The report will not be considered part of the development and production plan; however, the report will accompany the plan through all review processes.

(ii) Submission of an Environmental Report will not be required for leases in the Gulf of Mexico, except as provided in paragraph (a)(3)(iii), or for leases anywhere on the OCS on which oil and gas in paying quantities has been discovered before enactment of the Act, unless the proposed activities would affect any land use or water use in the coastal zone of a State with a coastal zone management program approved pursuant to section 306 of the Coastal Zone Management Act. Also, the Director may request specific environmental information to make the findings required under applicable law, including but not limited to, the Act and the National Environmental Policy Act.

(iii) Submission of an Environmental Report will be required for leases located in the eastern Gulf of Mexico.

(4) The Director may require the lessees of tracts on which oil or gas, or both, have been discovered in paying quantities and which are adjacent to or nearby the area covered in the development and production plan, to submit a preliminary description of their plans for development and production from those leases on adjacent or nearby areas.

(5) The lessee shall indicate which portions of the development and production plan the lessee believes are exempt from disclosure under the Freedom of Information Act (5 U.S.C. 552) and the implementing regulations (43 CFR Part 2). The lessee shall include a written discussion in the plan of the general subject matter of the deleted portions of the plan for transmittal to the recipients of copies of the plan identified in paragraph (b)(1) of this section.

(6) A development and production plan shall not be deemed submitted until:

(i) The Director has determined that the plan and accompanying Environmental Report are complete and contain the information required by §§ 250.34-2(a) and 250.34-3(b). The determination of whether a plan and accompanying Environmental Report are complete shall be made within 20 working days after the filing of the plan.

(ii) The plan is accompanied by (a) certificate(s) of coastal zone consistency as provided in 15 CFR Part 930, whenever the activities described would affect any land use or water use in the coastal zone of any State with a coastal zone management program, approved pursuant to section 306 of the Coastal Zone Management Act.

(iii) The Director has been given the number of copies of a complete development and production plan and accompanying Environmental Report that the Director has determined is necessary for distribution pursuant to paragraph (b)(1) of this section. The

Director shall advise the lessee of the number of copies that are needed for distribution.

(b)(1) Within 10 days after a development and production plan has been deemed submitted, the Director shall publish a notice of receipt and transmit a copy of the plan, except for those portions of the plan determined to be exempt from disclosure under the Freedom of Information Act (5 U.S.C. 552) and the implementing regulations (43 CFR Part 2), and the accompanying Environmental Report to the Governor of each affected State, except as provided in paragraph (b)(2) of this section, the coastal zone management agency of each affected State that has a coastal zone management program approved pursuant to section 306 of the Coastal Zone Management Act, and the executive of each affected local government that requests a copy. The Director shall also make copies of the plan and accompanying Environmental Report available to any appropriate Federal agency, interstate regional entity, and the public, in accordance with established Departmental practices and procedures.

(2) The Governor of an affected State adjacent to the western Gulf of Mexico that does not have a coastal zone management program approved pursuant to section 306 of the Coastal Zone Management Act may receive copies of development and production plans by submitting to the Director a written request for the documents. The Director shall notify the appropriate lessees immediately upon receipt of such a request. The Governor of Florida will receive copies of plans under the provisions of paragraph (b)(2) of this section.

(c)(1) The Governor of each affected State, the coastal zone management agency of each affected State that has a coastal zone management program approved pursuant to section 306 of the Coastal Zone Management Act, and the executive of each affected local government shall have 60 days from the date of receipt of the development and production plan and accompanying Environmental Report to submit comments and recommendations to the Director. The executive of any affected local government must forward all recommendations to the Governor of the State prior to submitting them to the Director. In addition, any interested Federal agency or person may submit comments and recommendations to the Director. All comments and recommendations shall be made available to the public in accordance with established Departmental practices and procedures.

(2) In the evaluation of a development and production plan, the Director shall accept recommendations of the Governor of each affected State and may accept the recommendations of the executive of an affected local government, if the Director determines, after having provided the opportunity for consultation, that the recommendations provide for a reasonable balance between the national interest and the well-being of the citizens of the affected State. In the evaluation of a plan, the Director shall also consider written comments by any appropriate Federal agency, interstate regional entity and the public that are timely received. The Governor of each affected State shall be given in writing, the reasons for rejecting the Governor's recommendations or for implementing any alternative means identified during consultations with the Governor.

(3)(i) When it is determined that activities proposed in a development and production plan will affect any land use or water use in the coastal zone of a State with a coastal zone management program approved pursuant to section 306 of the Coastal Zone Management Act, the plan will be processed in accordance with the regulations in this section and the regulations governing Federal Coastal Zone Management Consistency Procedures (15 CFR Part 930).

(ii) The Governor of an affected State that does not have a coastal zone management program approved pursuant to section 306 of the Coastal Zone Management Act may advise the Director that the State does not wish to receive or review development and production plans under section 19 of the Act.

(d) The Director shall review the environmental impacts of the activities described in the development and production plan pursuant to the provisions of § 250.34-4.

(e)(1) If the Director determines, subject to the provisions of section 102(2)(C) of the National Environmental Policy Act, that approval of a development and production plan is a major Federal action significantly affecting the quality of the human environment, the Director shall transmit the draft environmental impact statement to the Governor of each affected State, the coastal zone management agency of each affected State that has a coastal zone management program approved pursuant to section 306 of the Coastal Zone Management Act, and the executive of each affected local government that requests a copy. The Director shall also make copies of the environmental impact statement available to any appropriate Federal agency, interstate entity, and the public, in accordance with established Departmental practices and procedures.

(2) Prior to or immediately after a determination by the Director that approval of a development and production plan requires that the procedures under the National Environmental Policy Act shall commence, the Director may require lessees of tracts in the vicinity, for which development and production plans have not been approved, to submit preliminary or final plans for their leases.

(3) A determination by the Director that approval of a development and production plan requires commencement of the procedures under the National Environmental Policy Act shall have no effect upon the timeframe that a State with a coastal zone management program approved pursuant to section 306 of the Coastal Zone Management Act has to complete its coastal zone consistency review.

(f) After reviewing the record of any public hearing held with respect to the approval of a development and production plan for which an environmental impact statement is prepared, the Director shall, within 60 days after the release of the final environmental impact statement, approve, require modification of, or disapprove the plan. Where no environmental impact statement is prepared, the Director shall, after reviewing all comments and recommendations submitted pursuant to paragraphs (c)(1) and (2) of this section, approve, require modification of, or disapprove a plan no later than 60 days after the last day of the comment period provided in paragraph (c)(1) of this section.

(g)(1) In the evaluation of a development and production plan, the Director shall consider whether the plan is consistent with:

(i) The provisions of the lease;

(ii) The provisions of the Act;

(iii) The provisions of regulations prescribed under the Act, including air quality regulations prescribed by the Secretary pursuant to section 5(a)(8) of the Act;

(iv) Other applicable Federal laws;

(v) Environmental, safety, and health requirements; and

(vi) The statutory requirement to protect property, natural resources of the OCS including any mineral deposits (in areas leased or not leased), and the national security or defense.

(2) The Director shall:

(i) Approve any plan which is consistent with the criteria in paragraphs (g)(1)(i) through (vi) of this section;

(ii) Require the lessee to modify any plan which is inconsistent with the criteria in paragraphs (g)(1)(i) through (vi) of this section; or

(iii) Disapprove any plan if the Director determines that:

(A) State concurrence with the applicant's coastal zone consistency certification has not been received, the State's concurrence has not been conclusively presumed, or the State objects to the consistency certification and the Secretary of Commerce does not make the determination authorized by section 307(c)(3)(B)(iii) of the Coastal Zone Management Act;

(B) Operations threaten national security or national defense; or

(C) Exceptional geological conditions in the lease area, exceptional resource value in the marine or coastal environmental, or other exceptional circumstances exist, and that *(1)* implementation of the plan would probably cause serious harm or damage to life (including fish and other aquatic life), to property, to any mineral deposits (in areas leased or not leased), to the national security or defense, or to the marine, coastal, or human environments; (*2*) the threat of harm or damage will not disappear or decrease to an acceptable extent within a reasonable period of time; and (*3*) the advantages of disapproving the plan outweigh the advantages of development and production.

(3) The Director shall notify the lessee in writing of the reason(s) for disapproving a development and production plan or for requiring modification of a plan and the conditions which must be met for plan approval.

(h) The lessee may resubmit a development and production plan, as modified, to the Director. Within 60 days following the 60-day comment period provided for in paragraph (c)(1) of this section, the Director shall approve, disapprove, or require modification of the modified plan based upon the criteria in paragraphs (g)(1) (i) through (vi) of this section.

(i)(1) If a development and production plan is disapproved for the sole reason that a State consistency certification has not been obtained, the Director shall approve the plan upon receipt of the concurrence, at the time when concurrence is conclusively presumed, or when the Secretary of Commerce makes a finding authorized by section 307(c)(3)(B)(iii) of the Coastal Zone Management Act.

(2) If a development and production plan is disapproved because a State objects to the lessee's coastal zone consistency certification, the lessee shall modify the plan to accommodate the State's objection(s) and resubmit the plan to: (i) The Director for review pursuant to the criteria in paragraphs (g)(1) (i) through (vi) of this section; and (ii) through the Director, to the State for review pursuant to the Coastal Zone Management Act and the implementing regulations (15 CFR 930.83 and 930.84). Alternatively, the lessee may appeal the State's objection to the Secretary of Commerce pursuant to the procedures described in section 307 of the Coastal Zone Management Act and the implementing regulations (Subpart H of 15 CFR Part 930). The Director shall approve, disapprove, or require modification of a plan as revised within 60 days following the 60-day comment period provided for in § 250.34-2(c)(1).

(j) When the Director requires modifications to a resubmitted development and production plan as provided in (h) of this section, the Director may waive procedural requirements as he considers appropriate.

(k) Development and production plans disapproved pursuant to paragraph (g)(2)(iii) or paragraph (h) of this section are subject to the provisions of section 25(h)(2) of the Act and the implementing regulations (30 CFR 250.12 and 43 CFR 3320.2).

(l)(1) The Director shall periodically review the activities being conducted under an approved development and production plan. The frequency and extent of the Director's review shall be based upon the significance of any changes in available information and in onshore or offshore conditions affecting or impacted by development or production activities being conducted pursuant to the plan. If the review indicates that the plan should be revised to meet the requirements of this part, the Director shall require such revision pursuant to paragraph (l)(2) of this section.

(2) Proposals to revise an approved development and production plan, whether initiated by the lessee or ordered by the Director, shall be submitted to the Director for approval in the same manner as, and with the same information required for, a new development and production plan. When the Director determines that a proposed revision could result in a significant change in the impacts previously identified and evaluated, the revision shall be subject to all of the procedures in this section except those pertaining to the consistency requirements of the Coastal Zone Management Act. When the Director determines that a proposed revision calls for additional permits, the proposed revision may be subject to all the procedures in this section. Information copies of all revisions to an approved plan will be forwarded by the Director to the recipients of the previously approved plan.

(3) When any revision to an approved development and production plan is proposed by the lessee, the Director may approve the revision if it is

determined that the revision is consistent with the protection of the marine, coastal, and human environments and: will lead to greater recovery of oil and natural gas; improve the efficiency, safety, and environmental protection of the recovery operation; is the only means available to avoid substantial economic hardship to the lessee; or is otherwise not inconsistent with the provisions of the Act.

(m) Whenever the lessee fails to submit a development and production plan in accordance with provisions of this section or fails to comply with an approved plan, the lease may be canceled in accordance with section (5)(c) and (d) of the Act and the implementing regulations (30 CFR 250.12 and 43 CFR 3320.2).

(n) In order to ensure that activities to be carried out under a proposed development and production plan and activities being carried out under an approved development and production plan are carried out in a safe and environmentally acceptable manner, the Director may authorize or direct the lessee to conduct geological, geophysical, or other surveys that the Director determines are necessary for evaluation of such activities. The lessee shall provide to the Director, upon request, copies of any data or information obtained as a result of the surveys.

(o) The lessee may not drill any well until the Director's approval of an application for permit to drill, filed in accordance with the requirements of 30 CFR 250.36, has been received. Permit applications must conform to the activities described in detail in the related approved development and production plan, and shall not be subject to a separate State coastal zone consistency review.

(p) Nothing in this section shall be viewed as limiting the lessee's responsibility to take appropriate measures to meet emergency situations. In such situations, the Director may approve or require departures from an approved development and production plan.

(q) The lessee shall, contemporaneously with the submission to the Minerals Management Service, submit to the Federal Energy Regulatory Commission that portion of any development and production plan which relates to production of natural gas and the facilities for transportation of natural gas.

(43 U.S.C. 1352)

[44 FR 53695, Sept. 14, 1979; 45 FR 20465, Mar. 28, 1980; 45 FR 37818, June 5, 1980, as amended at 47 FR 25331, June 11, 1982; 48 FR 55568, Dec. 14, 1983]

### § 250.34-3 Environmental Report.

(a) *Environmental Report (Exploration).* At the same time the lessee submits an exploration plan to the Director, an Environmental Report (Exploration) shall be submitted, except as provided in § 250.34-1(a)(2)(ii). The report shall identify the name of the lessee or operator and the lease(s) involved. The report should be in summary form and shall include information available at the time the related exploration plan is submitted. Information and data which are site-specific or which are developed subsequent to the most recent environmental impact statement or other environmental impact statements and analyses in the immediate area shall be specifically considered. In order to eliminate the repetition of information and data discussed in the related plan, a broader presale environmental impact statement, other Environmental Reports, environmental analyses, or impact statements prepared for the geographic area, the lessee shall summarize the information, data, and issues in such other documents and concentrate on the issues specific to the site(s) of exploration activity. Discussions contained in the other documents shall be referenced when incorporation will cause a decrease in bulk without impeding review of the issues. The material referred to shall be cited and described briefly in the Environmental Report (Exploration), and include a statement of where the material is reasonably available for inspection. Any material based on proprietary data which is not itself available for inspection shall not be referenced. The Environmental Report (Exploration) shall include the following:

(1) To the extent that information is not contained in the related explora-

tion plan, the Environmental Report shall contain:

(i) A brief description of the following:

(*A*) The procedures, personnel, and equipment that are to be used for preventing, reporting, and cleaning up spills of oil or waste materials which may occur during the exploration activities, including information on response time, capacity and location of equipment and sites and methods of disposal;

(*B*) The location, size, number and land requirements (including rights-of-way and easements) of onshore support and storage facilities, and, where possible, a timetable regarding the acquisition of lands and the construction or expansion of any facilities;

(*C*) The estimated number of persons expected to be employed in support of offshore, onshore, and transportation activities, and, where possible, the approximate number of new employees and families likely to move into the affected area;

(*D*) The most likely travel routes for boat and aircraft traffic between offshore and onshore facilities, the probable location of onshore terminals, and the estimated frequency such routes will be traversed;

(*E*) The quantity and composition of solid and liquid wastes and pollutants likely to be generated by offshore, onshore, and transport operations;

(*F*) Major supplies, services, energy, water, or other resources within affected States necessary for carrying out the related plan;

(*G*) Environmentally sensitive or potentially hazardous areas, including:

(*1*) Site specific geology, e.g., bathymetry, seismicity, extent and type of bottom sediments, and geologic features which pose a potential hazard to the activities proposed;

(*2*) Historic patterns and other meteorological conditions including storm frequency and magnitude, wind direction and velocity, of offshore areas; listing, where possible, the means and extremes of each;

(*3*) Physical oceanography including onsite direction and velocity of currents;

(*4*) Onsite flora and fauna including bottom communities, where present, transitory birds and mammals that may be in the area when proposed activities are being conducted, identification of endangered species and their habitats that could be affected by proposed activities, and typical fishing seasons of the area;

(*5*) Environmentally sensitive areas (onshore as well as offshore), e.g., refuges, preserves, sanctuaries, rookeries, calving grounds, and areas of particular concern identified by an affected State pursuant to the Coastal Zone Management Act which may be affected by the proposed activities; and

(*6*) Onsite uses of the area, e.g., shipping, military use, recreation, boating, and commercial fishing;

(*7*) Archeological and cultural resources located within the area that may be disturbed by the proposed activities;

(*8*) Existing and planned monitoring systems that are measuring or will measure environmental conditions and provide information and data on the impacts of activities in the geographic areas.

(ii) An assessment of the direct effects on the offshore and onshore environments expected to occur as a result of implementation of the exploration plan, expressed in terms of magnitude and duration, with special emphasis upon the identification and evaluation of unavoidable and irreversible impacts on the environment.

(iii) For leases in the western Gulf of Mexico, the Director, after consultation with the Office of Coastal Zone Management and the affected State(s) with (an) approved coastal zone management program(s), may limit the amount of information required to be included in an Environmental Report to those parts of paragraphs (a)(1) (i) and (ii) of this section necessary for the State's review and concurrence with the consistency determination, considering operating conditions, operating experience, and existing facilities in the area of proposed activities. The Director shall advise the lessee of the amount of information required to be included in an Environmental Report.

(2) Such other information and data as the Director may require.

(3) The name, address, and telephone number of an individual employee of the lessee to whom inquiries by the Director and the affected State(s) may be made.

(4)(i) For onshore activities directly associated with a proposed OCS facility, the lessee shall provide information on each source of air pollutants, listing: The source; the location of each source; the chemical composition and quantity of air pollutants; and the frequency and duration of emissions.

(ii) For each OCS facility, the lessee shall review the requirements of § 250.57, and shall submit only that information, described below, needed to make the findings under § 250.57:

(A)(*1*) Projected emissions from each proposed or modified facility for each year of operation, and the bases for all calculations, to include: (*i*) For each source: The source, the amount of the emission by air pollutant expressed in tons per year, and the frequency and duration of emissions; (*ii*) for each facility: The facility, the total amount of emissions by air pollutant expressed in tons per year, and in addition, for a modified facility only, the incremental amount of total emissions by air pollutant resulting from the new or modified source or sources; (*iii*) a detailed description of all processes, process equipment, and storage units, including information on fuels to be burned; (*iv*) a schematic drawing which identifies the location and elevation of each source; and (*v*) if projected emissions are based on the use of emission reduction control technology, a description of the controls providing the information required by paragraph (a)(4)(ii)(D) of this section. If a mobile drilling vessel has been described in an earlier Environmental Report, the lessee may reference, consistent with the limitations described in paragraph (a) of this section, the information in that report pertaining to paragraphs (a)(4)(ii)(A)(*1*) (*iii*), (*iv*) and (*v*).

(*2*) The distance of each proposed facility from the mean high water mark (mean higher high water mark on the Pacific Coast) of any State.

(B)(*1*) The model or models used to determine the effect on the onshore air quality of emissions from each facility, or from other facilities when required by the Director, and the results obtained through the use of the model or models. The model or models must be approved for use by the Director.

(*2*) The best available meteorological information and data consistent with the model or models used, stating the basis for the information and data selected.

(C) The air quality status of any onshore area where the air quality is significantly affected by projected emissions from each facility proposed in the plan. The area should be classified as nonattainment, attainment, or unclassifiable, to include: The status of each area by air pollutant; the class of attainment areas; and the air pollution control agency whose jurisdiction covers the area identified.

(D) The emission reduction control technology available to reduce emissions, to include: The source; the emission reduction control technology; the reductions achieved; and the monitoring system the lessee proposes to use to measure emissions. If applicable, the lessee shall indicate which emission reduction control technology the lessee believes constitutes BACT and the basis for that opinion.

(b) *Environmental Report (Development/Production).* At the same time the lessee submits a development and production plan to the Director, an Environmental Report (Development/Production) shall be submitted, except as provided for in § 250.34-2(a)(3)(ii). The report shall identify the name of the lessee or operator and the lease(s) involved. The report shall be as detailed as necessary to enable identification and evaluation of the environmental consequences of the proposed activities and shall include information available at the time the related plan is submitted. Information and data which are site-specific or which are developed subsequent to the most recent environmental impact statement or other environmental impact statements and analyses in the immediate area shall be specifically considered. In order to eliminate the repetition of information and data discussed in the related plan, a broader presale environmental impact statement, other Environmental Reports, environmental analyses, or impact statements prepared for the geographic area, the lessee shall summarize the information, data, and issues in such other documents and concentrate on the issues specific to the site(s) of development and production activity. Discussions contained in the other documents shall be referenced when incorporation will cause a decrease in bulk without impeding review of the issues. The material referred to shall be cited and described briefly in the Environmental Report (Development/Production), and include a statement of where the material is reasonably available for inspection. Any material based on proprietary data which is not itself available for inspection shall not be referenced. The Environmental Report (Development/Production) shall include the following:

(1) To the extent that information is not contained in the related development and production plan, the Environmental Report shall contain:

(i) A brief description of the following:

(A) The location, description, and size of any offshore and, to the maximum extent practicable, land-based operations to be conducted or contracted for as a result of the proposed activity. This shall include:

(*1*) The acreage required within a State for facilities, rights-of-way, and easements;

(*2*) The means proposed for transportation of oil and gas to shore, the routes to be followed by each mode of transportation, and the estimated quantities of oil or gas, or both, to be moved along such routes:

(*3*) An estimate of the frequency of boat and aircraft departures and arrivals, the onshore location of terminals, and the normal routes for each mode of transportation; and

(*4*) The quantities, types, and plans for disposal of solid and liquid wastes and pollutants likely to be generated by offshore, onshore, and transport operations, and, regarding any wastes which may require onshore disposal, the means of transportation to be used to bring the wastes to shore, the disposal methods to be utilized, and the location of onshore waste disposal or treatment facilities.

(B) The requirements for land, labor, material, and energy for the items identified above, including:

(*1*) The approximate number, timing, and duration of employment of persons who will be engaged in onshore development and production activities, and approximate number of local personnel who will be employed for or in support of the development activities (classified by the major skills or crafts that will be required from local sources and estimated number of each such skill needed), and the approximate total number of persons who will be employed during the onshore construction activity and during all activities related to offshore development and production;

(*2*) The approximate number of people and families to be added to the population of local near-shore areas as a result of the planned development;

(*3*) An estimate of significant quantities of energy and resources to be used or consumed, including electricity, water, oil and gas, diesel fuel, aggregate, or other supplies, which may be purchased within an affected State; and

(*4*) The types of contractors or vendors which will be needed, although not specifically identified, and which may place a demand on local goods and services.

(C) A schedule setting forth specific near-shore and onshore development activities which correspond to the offshore development and production activities described in detail in the related plan. To the maximum extent possible, individual activities are to be projected on a year-to-year basis. The schedule shall include:

(*1*) The sequence in which events are expected to be accomplished;

(*2*) An estimate of the time required to complete specific activities;

(*3*) The month and year that specific actions are most likely to occur onshore and offshore; and

(*4*) The month and year that other pertinent activities associated with development of onshore and offshore facilities are likely to be accomplished.

(D) A description of any environmental monitoring systems proposed for use by the lessee.

(E) A description of the contingency plans that are in effect for the area to be developed together with a discussion of the pollution-prevention and cleanup equipment that is or will be maintained on the drill site and in the area pursuant to a Regional Contingency Plan.

(F) A narrative description of the existing environment, with an emphasis placed on those environmental values that may be affected by the proposed action. This section shall contain a description of the physical environment of the area covered by the related plan. This portion of the report shall include data and information obtained or developed by the lessee together with other pertinent information and data available to the lessee from other sources. The information and data to be included in the lessee's report on the environment shall include, where appropriate:

(*1*) Summary conclusions of cultural and historical resource surveys of the lease(s) or unit area;

(*2*) The seafloor configuration, stability, foundation characteristics, sedimentation, and erosion potential at the site of structural components described in the plan;

(*3*) The seismic risk and conditions including geophysical high-resolution surveys of sites, routes, and corridors;

(*4*) The aquatic biota, including a description of fishery and marine mammal significance and utilization of the lease or unit area;

(*5*) The predevelopment ambient water column quality and temperature data for incremental depths for the area encompassed by the plan;

(*6*) The physical oceanography, including ocean currents described as to prevailing direction, seasonal variations, and variations at different depths in the lease(s) or unit area;

(*7*) Historic patterns and other meterologic conditions, including storm frequency and magnitude, wind direction and velocity, and ambient air quality, listing, where possible, the means and extremes of each;

(*8*) The other uses of the area such as military use for national security or defense; and

(*9*) The existing or planned monitoring systems that are currently measuring impacts of activities on the environment in the lease sale area.

(ii) An assessment of the effects on the environment expected to occur as a result of implementation of the related plan. This section of the report shall identify specific and cumulative impacts that may occur both onshore and offshore and measures proposed to mitigate these impacts. Such impacts shall be quantified to the fullest extent possible and shall be accumulated for all activities for each of the major elements of the environment (i.e., water, biota, etc.). In every case, impacts shall be expressed in terms of magnitude and duration. The report shall place special emphasis upon the identification and evaluation of unavoidable and irreversible impacts on the environment and additional environmental monitoring systems that may be needed to provide accurate reporting of cumulative impacts on the environment.

(iii) A discussion of alternatives to the activities proposed that were considered during the development of the related plan; for example, a comparison of development and production operations using a bottom-supported platform which extends above the surface of the ocean with a similar degree of oil and gas development using seafloor completion and production techniques. Any significant differences in the environmental impacts of the use of alternative technologies shall be identified and discussed.

(iv) For leases in the western Gulf of Mexico, the Director, after consultation with the Office of Coastal Zone Management and the affected State(s) with (an) approved coastal zone management program(s), may limit the amount of information required to be included in an Environmental Report (Development/Production) to those parts of paragraphs (b)(1)(i) thru (iii) of this section necessary for the State's review and concurrence with the consistency determination, considering operating conditions, operating experience, and existing facilities in the area or proposed activities.

(2) Such other information and data as the Director may require.

(3) The name, address, and telephone number of an individual em-

ployee of the lessee to whom inquiries by the Director and the affected States may be directed.

(4)(i) For onshore activities directly associated with a proposed OCS facility, the lessee shall provide information on each source of air pollutants, listing: The source; the location of each source; the chemical composition and quantity of air pollutants; and the frequency and duration of emissions.

(ii) For each OCS facility the lessee shall review the requirements of § 250.57, and shall submit only that information, described below, needed to make the findings under § 250.57:

(A)(*1*) Projected emissions from each proposed or modified facility for each year of operation, and the bases for all calculations, to include:

(*i*) For each source: the source, the amount of the emission by air pollutant expressed in tons per year, and the frequency and duration of emissions;

(*ii*) For each proposed facility: The facility, the total amount of emissions by air pollutant expressed in tons per year, the frequency distribution of total emissions by air pollutant expressed in pounds per day, and in addition, for a modified facility only, the incremental amount of total emissions by air pollutant resulting from the new or modified source or sources;

(*iii*) A detailed description of all processes, process equipment, and storage units, including information on fuels to be burned;

(*iv*) A schematic drawing which identifies the location and elevation of each source; and

(*v*) If projected emissions are based on the use of emission reduction control technology, a description of the controls providing the information required by paragraph (b)(4)(ii)(D)(*1*) of this section.

(*2*) The distance of each proposed facility from the mean high water mark (mean high water mark on the Pacific Coast) of any State.

(B)(*1*) The model or models used to determine the effect on the onshore air quality of emissions from each facility, or from other facilities when required by the Director, and the results obtained through the use of the model or models. The model or models must be approved for use by the Director.

(*2*) The best available meteorological information and data consistent with the model or models used, stating the basis for the information and data selected.

(C) The air quality status of any onshore area where the air quality is significantly affected by projected emissions from each facility proposed in the plan. The area should be classified as nonattainment, attainment, or unclassifiable, listing: The status of each area by air pollutant; the class of attainment areas; and the air pollution control agency whose jurisdiction covers the area identified.

(D)(*1*) The emission reduction control technology available to reduce emissions, listing: The source; the emission reduction control technology; the reductions achieved; and the monitoring system the lessee proposes to use to measure emissions. If applicable, the lessee shall indicate which emission reduction control technology the lessee believes constitutes BACT and the basis for that opinion.

(*2*) The ownership of the offshore and onshore offsetting source or sources, and the reduction obtainable from each offsetting source.

(43 U.S.C. 1352)

[44 FR 53698, Sept. 14, 1979, as amended at 45 FR 15143, Mar. 7, 1980; 48 FR 55456, Dec. 13, 1983]

### § 250.34-4 Compliance with the National Environmental Policy Act (NEPA).

(a) Prior to approval of an exploration or development and production plan, or approval of significant revisions to an approved exploration or development and production plan, the Director shall review the environmental impacts of the activities proposed in accordance with applicable policies and guidelines to determine whether the proposed exploration activities, or development and production activities, should be approved, and whether approval of the proposed activities constitutes a major Federal action significantly affecting the quality of the human environment requiring preparation of an Environmental Impact Statement pursuant to section 102(2)(C) of the National Environmental Policy Act and the implementing regulations. In the preparation of documents that present evaluations of the environmental impacts expected to result from the conduct of the activities described in the plan, the Director may utilize information contained in the lessee's Environmental Report.

(b) During the review conducted in accordance with paragraph (a) of this section, the Director shall give particular attention to:

(1) The location and design of exploration, development, and production facilities which are proposed for installation in areas of high seismic risk or seismicity;

(2) The location and design of exploration, development, and production facilities which are proposed for installation within or near the boundary of a marine sanctuary, wildlife refuge, or other areas of high ecological sensitivity;

(3) The location of bottom-founded structures in areas of potentially hazardous natural bottom conditions; and

(4) The use of new or unusual technology.

(c) An Environmental Impact Statement shall be prepared when the Director determines that the impacts of activities described in the new or revised plan constitute a major Federal action significantly affecting the quality of the human environment and have not been adequately considered in a previous Environmental Impact Statement. In this regard, the Director shall consider:

(1) Whether implementation of the activities described in the new or revised plan would require construction of new onshore processing, storage, treatment, or transportation facilities which could have significant adverse impacts upon the marine, coastal, or human environments;

(2) Whether the cumulative impact of the proposed activities have been previously considered, or whether the impacts are significantly greater than those previously analyzed; and

(3) The likelihood of adverse impacts on the marine, coastal, or human environments that differ significantly in magnitude, duration, or nature from the impacts previously analyzed.

(d) The Director shall declare the approval of a development and production plan in any area or region (as defined by the Director) of the OCS, except in the western Gulf of Mexico, to be a major Federal action at least once pursuant to subsection 25(e) of the Act.

(e) Where it has been determined that an Environmental Impact Statement will be prepared, the Director shall decide whether the Statement will cover the activities described in a single development and production plan or those described in a number of such plans covering an area of the OCS where there is a likelihood of significant development. In the preparation of an Environmental Impact Statement, the Director may utilize information in any relevant Environmental Impact Statement or any other document previously prepared during or as a result of an environmental review where that action serves to reduce repetition and to expedite or facilitate the conduct and completion of the National Environmental Policy Act process.

[44 FR 53700, Sept. 14, 1979]

### § 250.35 Effect of drilling or well reworking on lease term.

(a) Drilling or well reworking operations on a leased area, which have been approved pursuant to the regulations in this part, shall continue the lease in effect so long as the drilling or well reworking operations are conducted no more than 90 days before the expiration of the primary term. A lease continued beyond its primary term by production or by drilling or well reworking operations shall be continued in effect by production or by drilling or well reworking operations which are commenced on or before the 90th day after the date of last production or on or before the 90th day after the date of the completion of the last drilling or well reworking operations. No time lapse in drilling or well reworking activities of greater than 90 days shall be deemed to be prompt and efficient unless operations on the lease have been suspended pursuant to § 250.12 of this part.

(b) The provisions of this section do not affect the lessee's obligation to obtain the Director's prior approval of a plan of exploration, or a plan of development and production under § 250.34 of this part, or of a notice of intention to drill or rework a well under § 250.36 of this part, or of complying with the other provisions of the regulations in this part.

### § 250.36 Applications for permit to drill, deepen, or plug back.

(a) Applications for permits to drill, deepen, or plug back wells must be filed on Form 9-331C. The Director shall advise the lessee concerning the number of copies of Form 9-331C to be submitted. Except as provided in § 250.13 of this part, written approval must be received from the Director prior to commencing operations.

(b)(1) An application for a permit to drill must include the following: the surface location and projected bottomhole location of the well(s), in feet, from the lease boundaries; the elevation of the derrick floor; the water depth; the estimated depth to which the well will be drilled; the estimated depths to the top of significant marker formations; the estimated depths at which encounters with water, oil, gas, and mineral deposits are expected; the proposed blowout-prevention and casing programs including the size, weight, grade, and setting depth of casing and the pressure rating of blowout prevention equipment; the estimated quantity of cement that will be used; and all other information specified on Form 9-331C. Information shall also be furnished relative to: plans for drilling other wells from the same platform; plans for coring at specified depths; plans for electrical and other logging operations; and such other information as may be required by the Director.

(2) At least two copies of the application shall be accompanied by a certified plat, drawn to a scale of 2,000 feet to the inch, showing the surface and subsurface location of the well(s) to be drilled and all the wells previously drilled in the vicinity for which information is available.

(c) An application for a permit to deepen or plug back must include the following: the present status of the well, including the production string or last string of casing; the well depth; the present productive zones and productive capability; and all other information specified on Form 9-331C. The application must be accompanied by a justification for and details of the proposed work.

[44 FR 61892, Oct. 26, 1979; 45 FR 20465, Mar. 28, 1980]

### § 250.37 Marking platforms, structures, and wells.

(a) The lessee shall mark each drilling platform or structure. All markings shall include the name of the lessee or operator, the name of the area, the block number, and the platform or structure designation. Letters and figures not less than 12 inches in height are to be used and the markings are to be placed on the diagonal corners of the platform or structure.

(b) Each well must be clearly identified by a sign containing the well number and the OCS lease number.

(c) The lessee shall preserve these markings and signs in good repair.

[44 FR 61892, Oct. 26, 1979; 45 FR 20465, Mar. 28, 1980]

### § 250.38 Well records.

(a) The lessee shall keep at its field headquarters, or at other locations conveniently available to the Director, accurate and complete records for each well and of all well operations, including: production, drilling, logging, directional well surveys, casing, perforating, safety devices, redrilling, deepening, repairing, cementing, alterations to casing, plugging, and abandoning. The records shall contain: a description of any unusual malfunction, condition, or problem; all the formations penetrated; the content and character of oil, gas, and other mineral deposits and water in each formation; the kind, weight, size, grade, and setting depth of casing; and all other information required by the Director.

(b)(1) Upon request by the Director, the lessee shall immediately transmit copies of the records of any of the well operations specified in paragraph (a) of this section. In any event, the lessee shall, within 30 days after completion of any well, transmit to the Director duplicate copies of the records of all operations on, or attached to, Form 9-

330 (*see* § 250.95 of this part). When operations are suspended, or temporarily prohibited, the lessee shall, within 30 days after the suspension or temporary prohibition or completion of any further operations, transmit to the Director duplicate copies of the records of all operations conducted during the suspension or temporary prohibition on, or attached to, Form 9-330 or Form 9-331 (*see* §§ 250.92 and 250.95 of this part), as appropriate.

(2) Upon request by the Director, the lessee shall submit paleontological reports identifying microscopic fossils by depth unless washed samples of drill cuttings, normally maintained by the lessee for paleontological determinations, are made available to the Director for inspection.

(3) Upon request by the Director, the lessee shall furnish copies, in a manner and form prescribed by the Director, of the daily drilling report and a plat showing the location, designation, and status of all wells on the leased lands.

(4) Upon request by the Director, the lessee shall furnish legible, exact copies of service company reports on cementing, perforating, acidizing, analyses of cores, or other similar services.

(c) If the Director determines that circumstances warrant, the lessee shall submit any other reports and records of operations, in the manner and form prescribed by the Director.

[44 FR 61892, Oct. 26, 1979; 45 FR 20465, Mar. 28, 1980]

### § 250.39 Tests, surveys, and samples.

(a) The lessee shall make adequate tests or surveys, in a manner acceptable to the Director to determine: the reservoir energy; the presence, quantity, and quality of oil, gas, sulphur, other mineral deposits, or water; the amount and direction of deviation of any well from the vertical; and the formation, casing, tubing, and other pressures.

(b) The lessee shall take formation samples or cores to determine the identity, fluid content, and character of any formation, in accordance with requirements prescribed by the Director in the approval of the notice to drill or redrill any well.

[44 FR 61892, Oct. 26, 1979, as amended at 47 FR 25331, June 11, 1982]

### § 250.40 Directional survey.

(a) An angular deviation and directional survey shall be made from the surface to the total depth of each well.

(b) The Director, at the request of an owner of an adjoining lease, may furnish a copy of the directional survey to the owner of an adjoining lease.

### § 250.41 Control of wells.

(a)(1) The lessee shall take all necessary precautions to keep its wells under control at all times. The lessee shall only utilize personnel who are trained and competent to drill and operate wells, and shall utilize and maintain materials and properly designed pressure fittings and equipment necessary to assure the safety of operating conditions and procedures. Casing, cementing, drilling mud, and blowout prevention programs for well drilling operations shall take into account the depths at which various fluid- or mineral-bearing formations are expected to be penetrated, the formation fracture gradients and pressures expected to be encountered, and other pertinent geologic and engineering information and data about the area.

(2) The lessee shall case and cement all wells with a sufficient number of strings of casing in a manner necessary to: prevent release of fluids from any stratum through the well bore (directly or indirectly) into the sea; prevent communication between separate hydrocarbon-bearing strata (except strata approved for commingling) and between hydrocarbon-and water-bearing strata; protect freshwater strata from contamination; support unconsolidated sediments; and otherwise provide a means of control of the formation pressures and fluids. The lessee shall install casing strong enough to withstand collapse, bursting, tensile and other stresses. The casing shall be cemented in a manner which will anchor and support the casing. Safety factors in the casing program design shall be of sufficient magnitude to provide optimum well control during drilling and to assure safe operations for the life of the well.

The lessee shall install structural or drive casing to provide hole stability for the initial drilling operation. A conductor string of casing (the first string run other than any structural or drive casing) must be cemented with a volume of cement sufficient to circulate back to the seafloor; however, if authorized by the Director, cement may be washed out or displaced to a specified depth below the seafloor to facilitate casing removal upon well abandonment. All subsequent strings must be securely cemented.

(3) The lessee shall maintain, readily accessible for use, quantities of drilling mud sufficient to assure well control. The lessee's testing procedures, characteristics, and use of drilling mud and conduct of related drilling procedures shall prevent blowouts or other loss of well control. Mud testing equipment and mud volume measuring devices shall be maintained in an operable condition at all times, and mud tests shall be performed frequently and recorded on the driller's log.

(4) The lessee shall install, use, and test blowout preventers and related well-control equipment in a manner necessary to prevent blowouts. In no event shall the lessee conduct drilling below the conductor string of casing until the installation of at least one remotely controlled blowout preventer and equipment for circulating drilling fluid to the drilling structure or vessel. Blowout preventers and related well-control equipment shall be pressure tested when installed, after each string of casing is cemented and at other times prescribed by the Director. Blowout preventers shall be activated frequently to test for proper functioning. All blowout-preventer tests shall be recorded on the driller's log.

(b) After wells are completed, the lessee shall take all necessary steps to prevent blowouts, and the lessee shall immediately take whatever action is required to bring under control any well over which control has been lost. For wells capable of flowing oil, gas, or formation fluids, the lessee shall install and maintain in operating condition subsurface-safety devices. For all producing wells including wells not capable of flowing oil, gas, or formation fluids, the lessee shall install and maintain surface safety valves with automatic shutdown controls and shall conduct tests or surveys designed to determine the effects of corrosive or erosive substances on well and production equipment. The lessee shall, as prescribed by the Director, periodically test and inspect all devices and equipment, and shall record the results of all tests.

[44 FR 61892, Oct. 26, 1979; 45 FR 20465, Mar. 28, 1980]

### § 250.42 Treatment of production.

The lessee shall put into marketable condition, if commercially feasible, all products produced from the leased land. In calculating the royalty payment, the lessee may not deduct the costs of treatment.

### § 250.43 Pollution and waste disposal.

(a)(1) The lessee shall not pollute the land or water, harm or damage fish and other aquatic life, or allow extraneous matter to enter and damage any mineral- or water-bearing formation.

(2) The lessee shall dispose of all waste materials in a manner approved by the Director.

(3) All spills or leakage of oil or waste materials shall be recorded by the lessee and shall be reported to the Director. All spills or leakage of oil or waste materials of a size or quantity specified by the appropriate agent of the Federal Government under the pollution-contingency plan shall be reported also by the lessee without delay, to the agent specified in the plan.

(b)(1) When pollution occurs as a result of operations conducted by or on behalf of the lessee, and the pollution damages or threatens to damage life (including fish and other aquatic life), property, any mineral deposits (in areas leased or not leased), or the marine, coastal, or human environment, the control and total removal of the pollution shall be at the expense of the lessee.

(2) Upon failure of the lessee to control and remove the pollution, the Director, in cooperation with other ap-

propriate agencies of Federal, State, and local governments, or in cooperation with the lessee, or both, shall have the right to control and remove the pollution in accordance with any established pollution-contingency plan for combating oil spills, or by other means, at the expense of the lessee. Such action shall not relieve the lessee of any responsibility provided for in the pollution-contingency plan or otherwise provided by law.

(c) The lessee's liability shall be governed by applicable law, including the Offshore Oil Spill Pollution Fund provisions of Title III of the Act.

### § 250.44 Borehole abandonment.

The lessee shall promptly plug and abandon any borehole on the leased land that the Director determines is no longer useful. However, no well shall be abandoned until its lack of capacity for further profitable production of oil, gas, or sulphur has been demonstrated to the satisfaction of the Director. Before abandoning a well that has been capable of producing oil or gas in paying quantities, the lessee shall submit to the Director a statement containing the reasons for abandonment and detailed plans for carrying out the necessary work (*see* § 250.92 of this part). A well may be abandoned only after receipt of written approval by the Director. No well shall be plugged if the plugging operation would jeopardize safe and economic operations of nearby wells. The manner and method of plugging must be approved or prescribed by the Director. Equipment shall be removed, and premises at the site properly conditioned immediately after plugging operations are completed. Drilling equipment shall not be removed from any suspended drilling operation without taking adequate measures, as approved or prescribed by the Director, to protect life (including fish and other aquatic life), property, any mineral deposits (in areas leased or not leased), and the marine, coastal, or human environment.

### § 250.45 Accidents, fires, and malfunctions.

(a)(1) In the conduct of all its operations, the lessee shall take all steps necessary to prevent accidents and fires. The lessee shall immediately notify the Director of all serious accidents, any death or serious injury, and all fires connected with any activity or operation pursuant to the lease. For the purpose of this section, a serious injury is one resulting in absence from work for 72 or more hours.

(2) Within 10 days of all serious accidents, the lessee shall submit a written report on any death or serious injury and on all fires connected with any activity or operation pursuant to the lease.

(b) The lessee shall notify the Director of any other unusual condition, problem, or malfunction connected with any activity or operation pursuant to the lease within 24 hours of its occurrence.

[44 FR 61892, Oct. 26, 1979; 45 FR 20465, Mar. 28, 1980]

### § 250.46 Safe and workmanlike operations.

(a) The lessee shall perform all operations in a safe and workmanlike manner and shall maintain all equipment in a safe condition for the protection of the lease and associated facilities, for the health and safety of all persons, and for the preservation and conservation of property and the environment.

(b) The lessee shall immediately take all necessary precautions to control, remove, or otherwise correct any hazardous oil and gas accumulation or other health, safety, or fire hazard.

### § 250.50 Authority and requirements for unitization.

(a) Unitization may be required or approved by the Director for the prevention of waste and the conservation of the natural resources of the OCS, and for the protection of correlative rights therein, including the protection of Federal royalty interests. Unitization may be required or approved for exploration, development, and/or production. Lessees may agree among themselves to unitization, subject to the Director's approval (voluntary unitization), or the Director may impose unitization on the initiation of one or more lessees or on the Director's own initiative (compulsory unitization).

(b) A unit area shall include the minimum number of leases or portions of leases required to permit one or more, or a portion of one or more, mineral reservoirs or potential hydrocarbon accumulations to be served by an optimal number of artificial islands, installations, or other devices necessary for the efficient exploration for or development and production of oil and gas or other minerals. The Director shall conditionally approve the development and production of unitized substances on the lessees' acceptance of any necessary adjustment in the unit area. Procedures for adjustment of a unit area shall be set forth in the unit agreement.

(c) Unitization may not be required or approved by the Director until he finds that the delineation of any reservoir or any potential hydrocarbon accumulation has been reasonably established.

(d) A unit agreement shall provide for the appointment of a unit operator and the allocation of costs and benefits to the unitized leases. In the absence of an agreed basis for the allocation of costs and benefits, or under unitization required by the Director, costs and benefits shall be allocated on an equitable basis determined by the Director, as supported by the record compiled in accordance with 30 CFR 250.51.

(e) Drilling, production, and well-reworking operations performed in accordance with a unit agreement shall be deemed to be performed for the benefit of all leases that are subject in whole or in part to the unit agreement. Plans may provide for the cessation of actual drilling activities for a reasonable period between the discovery and delineation of one or more reservoirs and the initiation of actual development and production to allow for the expeditious design, fabrication, and installation of artificial islands, installations, and other devices needed for development and production operations. When plans that call for the cessation of drilling prior to actual production involve one or more leases beyond their primary term, the plans shall be accompanied by a request and supporting justification for a suspension of operations or production pursuant to 30 CFR 250.12.

(f) A unit agreement shall be effective on the date specified in the unit agreement and shall terminate when unitized substances are no longer being produced or drilling or well reworking operations are no longer being conducted under the unit agreement, unless the Director has ordered or approved a suspension of operations or production pursuant to 30 CFR 250.12.

(g) If a lease is subject in whole or in part to unitization, the entire lease shall continue in force for the term provided in the lease and as long thereafter as any portion of the lease remains part of the unit area, and as long as there are operations within the unit area which serve to continue the lease in effect.

(h) Upon the expiration or termination of a unit agreement or when there is an adjustment of a unit area that results in the elimination of a lease or a portion of a lease from the unit agreement, each lease that was but is no longer subject in whole or in part to the unit agreement shall expire unless: (1) Its initial term has not expired, (2) drilling, production, or well-reworking operations are underway on the lease or portion of a lease, or (3) a suspension of production or operations has been ordered or approved for the lease or portion of a lease pursuant to 30 CFR 250.12.

(i) When a lease that is subject in whole or in part to a unit agreement is beyond the initial fixed term of the lease and unitized substances are not being produced, the lease shall expire unless: (1) The unit operator conducts a continuous drilling or well-reworking program designed to develop or restore the production of unitized substances, or (2) a suspension of operations has been ordered or approved in accordance with 30 CFR 250.12.

[45 FR 29285, May 2, 1980, as amended at 47 FR 6621, Feb. 16, 1982]

**§ 250.51 Procedures for unitization.**

[45 FR 29286, May 2, 1980]

### § 250.51-1 Voluntary unitization.

(a) Lessees seeking approval of unitization shall draft a unit agreement conforming to the model unit agreement. For good cause the Director may require or, upon request, approve a variation from the model unit agreement. Any request for variation shall be made at the time the proposed unit agreement is submitted to the Director for approval and shall include an explanation of the reasons for the variation. If the Director requires a variation from the model unit agreement, lessees shall be so informed at the time approval is given for a proposed unit agreement or at the time an order requiring unitization is issued.

(b) Lessees who seek approval of a unit agreement shall file a request with the Director accompanied by a proposed unit agreement conforming to the model unit agreement, and by the supporting geological and geophysical data and any other information that may be necessary to show that the proposed unitization meets the criteria of 30 CFR 250.50. If the Director approves the proposed unit agreement, lessees shall execute the unit agreement and file with the Director a counterpart in triplicate executed by each lessee. Where all lessees of the proposed unit area have executed the unit agreement, the Director may issue an order or orders approving unitization if he finds that unitization would be in accordance with 30 CFR 250.50.

[45 FR 29286, May 2, 1980]

### § 250.51-2 Compulsory unitization.

(a) If the Director requires unitization on his own initiative or in conjunction with an application for approval of unitization by less than all lessees of the proposed unit area, unitization shall be imposed according to a unitization plan which shall:

(1) Conform to the model unit agreement, unless good cause exists for variation from the model unit agreement and the reasons for the variation are stated in writing; and

(2) Conform to any proposed unit agreement executed by less than all of the lessees, unless good cause exists for variation from the proposed unit agreement and the reasons for the variation are stated in writing.

(b)(1) Lessees who seek compulsory unitization shall file a request with the Director accompanied by a proposed unit agreement conforming to the model unit agreement, together with supporting geological and geophysical data and any other information that may be necessary, to show that unitization meets the criteria of 30 CFR 250.50. The proposed unit agreement shall include a counterpart in triplicate executed by each lessee seeking compulsory unitization. Lessees seeking compulsory unitization shall serve copies of the request and executed counterparts of the proposed unit agreement on the nonconsenting lessees.

(2) If the Director initiates compulsory unitization, the Director shall serve notice on all lessees of the proposed unit area with a copy of the proposed unit agreement or unitization plan and a statement of reasons for the proposed unitization.

(c)(1) The Director may not require compulsory unitization unless he has first provided reasonable notice and an opportunity for a hearing to all lessees of the proposed unit area. Any lessee of the proposed unit area may request a hearing within 30 days of service of notice by the Director or service of a request for compulsory unitization by a lessee.

(2) No hearing may be held pursuant to this paragraph until at least 30 days written notice in advance of the hearing has been provided. The Director shall afford all lessees of the proposed unit area an opportunity to submit views orally and in writing and to question those seeking compulsory unitization. Adjudicatory procedures are not required, but the decision of the Director shall be based upon a record of the hearing including any written information made a part of the record. A party to a hearing may, at its own expense, cause a verbatim transcript to be made by a court reporter. If a verbatim transcript is made, three copies of the transcript shall be provided to the Director without charge within 10 days of the date of the hearing.

(d) The Director may issue an order or orders that require or disapprove compulsory unitization or approve or disapprove voluntary unitization. Any such order shall include a statement of reasons. The final order of the Director or his delegate may be appealed in accordance with 30 CFR Part 290.

[45 FR 29286, May 2, 1980]

### § 250.52 Pooling or drilling agreements.

(a) Pooling or drilling agreements may be made between lessees for the purpose of:

(1) Utilizing a common drilling site to explore, develop, or produce adjacent or adjoining tracts;

(2) Permitting lessees or pipeline companies to enter into contracts involving a number of tracts sufficient to justify operations on a large scale for the exploration for and development, production, or transportation of oil and gas or other minerals, or to finance these operations; or

(3) For other purposes in the interest of conservation.

(b) A pooling or drilling agreement shall not be deemed to affect the requirements for drilling, production, or well reworking operations set out in the Act, the regulations, or the lease.

(c) Pooling and drilling agreements shall be filed with the Director, in conjunction with a development and production plan approved under 30 CFR 250.34-2.

[45 FR 29286, May 2, 1980]

### § 250.53 Subsurface storage of oil or gas.

(a)(1) The Director may authorize the subsurface storage of oil or gas in the OCS when it can be shown that no undue interference with operations under existing leases will result.

(2) In each case, the authorization will provide for the payment of an adequate storage fee or rental on the stored oil or gas. When stored oil or gas is removed from storage in conjunction with oil or gas not previously produced, a royalty may be charged on the value or amount of stored oil or gas removed from storage in lieu of a fixed storage fee or rental. Any lease of an area used for the storage of oil or gas shall expire during the storage period unless oil or gas not previously produced on the lease is being produced in paying quantities or drilling or well reworking operations approved by the Secretary are underway.

(b) Applications for subsurface storage of oil or gas shall be filed with the Director, in triplicate, and shall include: the ownership of interests in the area involved; the parties involved, including lessees of other mineral interests; the storage fee, rental, or royalty offered to be paid for the right of storage; and all essential information showing the necessity for such storage. The storage agreement, signed by the parties involved, shall be submitted to the Director for approval, together with five copies for retention by the Department after approval.

### § 250.54 Marking of equipment.

Whenever practicable, all materials, equipment, tools, containers, and items used on the OCS are to be properly color-coded, stamped, or labeled with the owner's identification, as approved or prescribed by the Director, prior to actual use. For oil and gas operations, this means that the owner's identification is to be placed upon all materials, cable, equipment, tools, containers, and other objects which could be freed and lost overboard from rigs, platforms, or supply vessels, and which are of sufficient size or are of such a nature that they could be expected to interfere with commercial fishing gear if lost overboard.

### § 250.55 Flaring and venting of natural gas.

The lessee shall not flare or vent natural gas from any well without prior approval from the Director. Such approval will not be granted unless the Director finds that there is no practicable way to complete production of such gas, or the Director finds that flaring or venting is necessary to alleviate a temporary emergency situation or to conduct authorized testing or workover operations.

### § 250.57 Air quality.

[45 FR 15144, Mar. 7, 1980]

### § 250.57-1 Facilities described in a new or revised exploration plan or development and production plan.

(a) *New plans.* All exploration plans and development plans deemed submitted under § 250.34-1(a) or § 250.34-2(a) on or after June 2, 1980, shall include the information required to make the necessary findings under paragraphs (d) through (i) of this section and the lessee shall comply with the requirements of this section as necessary.

(b) *Applicability of this section to existing facilities.* (1) The Director may review any exploration plan or development and production plan deemed submitted or approved prior to June 2, 1980, to determine whether any facility described in the plan should be subject to review under this section and has the potential to significantly affect the air quality of an onshore area. To make these decisions the Director shall consider the following: The distance of the facility from shore; the size of the facility; the number of sources planned for the facility and their operational status; and the air quality status of the onshore area.

(2) For a facility identified by the Director under paragraph (b)(1) of this section, the Director shall require the lessee to refer to the information required under § 250.34-3(a)(4) or § 250.34-3(b)(4) and to submit only that information required to make the necessary findings under paragraphs (d) through (i) of this section. The lessee shall submit this information within 120 days of the Director's determination or within a longer period of time at the discretion of the Director. The lessee shall comply with the requirements of this section as necessary.

(c) *Revised facilities.* All revised exploration plans and development and production plans which are deemed submitted under § 250.34-1(a) or § 250.34-2(a) on or after June 2, 1980, shall include the information required to make the necessary findings under paragraphs (d) through (i) of this section. The lessee shall comply with the requirements of this section as necessary.

(d) *Exemption formulas.* To determine whether a facility described in a new, modified, or revised exploration plan or development and production plan is exempt from further air quality review, the lessee shall use the highest annual total amount of emissions from the facility for each air pollutant calculated in § 250.34-3(a)(4)(ii)(A)(*1*) or § 250.34-3(b)(4)(ii)(A)(*1*) and compare these emissions to the emission exemption amount "E" for each air pollutant calculated using the following formulas: $E=3400D^{2/3}$ for carbon monoxide (CO); and $E=33.3D$ for total suspended particulates (TSP), sulfur dioxide ($SO_2$), nitrogen oxides ($NO_x$), and VOC (where E is the emission exemption amount expressed in tons per year, and D is the distance of the proposed facility from the closest onshore area of a State expressed in statute miles). If the amount of these projected emissions is less than or equal to the emission exemption amount "E" for the air pollutant, the facility is exempt for that air pollutant from further air quality review required by paragraphs (e) through (i) of this section.

(e) *Significance levels.* For a facility not exempt under paragraph (d) of this section for air pollutants other than VOC, the lessee shall use an approved air quality model to determine whether projected emissions of those air pollutants from the facility result in an onshore ambient air concentration above the following significance levels:

| Air pollutant | Averaging time (hours) | | | | |
|---|---|---|---|---|---|
| | Annual | 24 | 8 | 3 | 1 |
| $SO_2$ | [1] 1 | [1] 5 | | [1] 25 | |
| TSP | [1] 1 | [1] 5 | | | |
| $NO_x$ | [1] 1 | | | | |
| CO | | | [1] 500 | | [1] 2,000 |

[1] µg/m³.

(f) *Significance determinations.* (1) The projected emissions of any air pollutant other than VOC from any facility which result in an onshore ambient air concentration above the significance level determined under paragraph (e) of this section for that air pollutant shall be deemed to significantly affect the air quality of the onshore area for that air pollutant.

(2) The projected emissions of VOC from any facility which is not exempt under paragraph (d) of this section for that air pollutant shall be deemed to significantly affect the air quality of the onshore area for VOC.

(g) *Controls required.* (1) The projected emissions of any air pollutant other than VOC from any facility, except a temporary facility, which significantly affect the quality of a nonattainment area shall be fully reduced. This shall be done through the application of BACT and, if additional reductions are necessary, through the application of additional emission controls or through the acquisition of offshore or onshore offsets.

(2) The projected emissions of any air pollutant other than VOC from any facility which significantly affect the air quality of an attainment or unclassifiable area shall be reduced through the application of BACT.

(i) Except for temporary facilities, the lessee also shall use an approved air quality model to determine whether the emissions of TSP or $SO_2$ that remain after the application of BACT cause the following maximum allowable increases over the baseline concentrations established in 40 CFR 52.21 to be exceeded in the attainment or unclassifiable area:

| Air pollutant | Annual mean [1] | Maximum allowable increases (averaging times) | |
|---|---|---|---|
| | | 24-hour maximum | 3-hour maximum |
| Class I | | | |
| TSP | [2] 5 | [2] 10 | |
| $SO_2$ | [2] 2 | [2] 5 | [2] 25 |
| Class II | | | |
| TSP | [2] 19 | [2] 37 | |
| $SO_2$ | [2] 20 | [2] 91 | [2] 512 |
| Class III | | | |
| TSP | [2] 37 | [2] 75 | |
| $SO_2$ | [2] 40 | [2] 182 | [2] 700 |

[1] For TSP—geometric. For $SO_2$—arithmetic.

[2] $\mu g/m^3$

No concentration of an air pollutant shall exceed the concentration permitted under the national secondary ambient air quality standard, or the concentration permitted under the national primary air quality standard, whichever concentration is lowest for the air pollutant for the period of exposure. For any period other than the annual period, the applicable maximum allowable increase may be exceeded during one such period per year at any one onshore location.

(ii) If the maximum allowable increases are exceeded, the lessee shall apply whatever additional emission controls are necessary to reduce or offset the remaining emissions of TSP or $SO_2$ so that concentrations in the onshore ambient air of an attainment or unclassifiable area do not exceed the maximum allowable increases.

(3)(i) The projected emissions of VOC from any facility, except a temporary facility, which significantly affect the onshore air quality of a nonattainment area shall be fully reduced. This shall be done through the application of BACT and, if additional reductions are necessary, through the application of additional emission controls or through the acquisition of offshore or onshore offsets.

(ii) The projected emissions of VOC from any facility which significantly affect the onshore air quality of an attainment area shall be reduced through the application of BACT.

(4)(i) If projected emissions from a facility significantly affect the onshore air quality of both a nonattainment and an attainment or unclassifiable area, the regulatory requirements applicable to projected emissions significantly affecting a nonattainment area shall apply.

(ii) If projected emissions from a facility significantly affect the onshore air quality of more than one class of attainment area, the lessee must reduce projected emissions to meet the maximum allowable increases specified for each class in paragraph (g)(2)(i) of this section.

(h) *Controls required on temporary facilities.* The lessee shall apply BACT to reduce projected emissions of any air pollutant from a temporary facility which significantly affect the air quality of an onshore area of a State.

(i) *Emission offsets.* When emission offsets are to be obtained, the lessee must demonstrate that: The offsets are equivalent in nature and quantity to the projected emissions that must be reduced after the application of

BACT; a binding commitment exists between the lessee and the owner or owners of the source or sources; the appropriate air quality control jurisdiction has been notified of the need to revise the State Implementation Plan to include the information regarding the offsets; and the required offsets come from sources which affect the air quality of the area significantly affected by the lessee's OCS operations.

(j) *Review of facilities with emissions below the exemption amount.* If, during the review of a new, modified, or revised exploration plan or development and production plan, the Director determines or an affected State submits information to the Director which demonstrates, in the judgment of the Director, that projected emissions from an otherwise exempt facility will, either individually or in combination with other facilities in the area, significantly affect the air quality of an onshore area, then the Director shall require the lessee to submit additional information to determine whether emission control measures are necessary. The lessee shall be given the opportunity to present information to the Director which demonstrates that the exempt facility is not significantly affecting the air quality of an onshore area of the State.

(k) *Emission monitoring requirements.* The lessee shall monitor, in a manner approved or prescribed by the Director, emissions from the facility. The lessee shall submit this information, in a manner and form approved or prescribed by the Director, with the monthly report of operations prescribed under § 250.93 of this part.

(l) *Collection of meteorological data.* The Director may require the lessee to collect, for a period of time and in a manner approved or prescribed by the Director, and submit meteorological data from a facility.

[45 FR 15144, Mar. 7, 1980]

### § 250.57-2 Existing facilities.

(a) *Process leading to review of an existing facility.* (1) An affected State may request that the Director supply basic emission data from existing facilities when such data are needed for the updating of the State's emission inventory. In submitting the request, the State must demonstrate that similar offshore and onshore facilities in areas under the State's jurisdiction are included also in the emission inventory.

(2) The Director may require lessees of existing facilities to submit basic emission data to a State submitting a request under paragraph (a)(1) of this section.

(3) The State submitting a request under paragraph (a)(1) of this section may submit information from its emission inventory which indicates that emissions from existing facilities may be significantly affecting the air quality of the onshore area of the State. The lessee shall be given the opportunity to present information to the Director which demonstrates that the facility is not significantly affecting the air quality of the State.

(4) The Director shall evaluate the information submitted under paragraph (a)(3) of this section and shall determine, based on the basic emission data, available meteorological data, and the distance of the facility or facilities from the onshore area, whether any existing facility has the potential to significantly affect the air quality of the onshore area of the State.

(5) If the Director determines that no existing facility has the potential to significantly affect the air quality of the onshore area of the State submitting information under paragraph (a)(3) of this section, the Director shall notify the State of, and explain the reasons for, this finding.

(6) If the Director determines that an existing facility has the potential to significantly affect the air quality of an onshore area of the State submitting information under paragraph (a)(3) of this section, the Director shall require the lessee to refer to the information requirements under § 250.34-3(a)(4) or § 250.34-3(b)(4) and to submit only that information required to make the necessary findings under paragraphs (b) through (e) of this section. The lessee shall submit this information within 120 days of the Director's determination or within a longer period of time at the discretion of the Director. The lessee shall

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comply with the requirements of this section as necessary.

(b) *Exemption formulas.* To determine whether an existing facility is exempt from further air quality review, the lessee shall use the highest annual total amount of emissions from the facility for each air pollutant calculated in § 250.34-3(a)(4)(ii)(A)(*1*) or § 250.34-3(b)(4)(ii)(A)(*1*) and compare these emissions to the emission exemption amount "E" for each air pollutant calculated using the following formulas: $E=3400D^{2/3}$ for CO; and $E=33.3D$ for TSP, $SO_2$, $NO_x$, and VOC (where E is the emission exemption amount expressed in tons per year and D is the distance of the facility from the closest onshore area of a State expressed in statute miles). If the amount of projected emissions are less than or equal to the emission exemption amount "E" for the air pollutant, the facility is exempt for that air pollutant from further air quality review required under paragraphs (c) through (e) of this section.

(c) *Significance levels.* For a facility not exempt under paragraph (b) of this section for air pollutants other than VOC, the lessee shall use an approved air quality model to determine whether projected emissions of those air pollutants from the facility result in an onshore ambient air concentration above the following significance levels:

| Air pollutant | Averaging time (hours) | | | | |
|---|---|---|---|---|---|
| | Annual | 24 | 8 | 3 | 1 |
| $SO_2$ | [1] 1 | [1] 5 | | [1] 25 | |
| TSP | [1] 1 | [1] 5 | | | |
| $NO_x$ | [1] 1 | | | | |
| CO | | | [1] 500 | | [1] 2,000 |

[1] μg/m³

(d) *Significance determinations.* (1) The projected emissions of any air pollutant other than VOC from any facility which result in an onshore ambient air concentration above the significance level determined under paragraph (c) of this section for that air pollutant shall be deemed to significantly affect the air quality of the onshore area for that air pollutant.

(2) The projected emissions of VOC from any facility which is not exempt under paragraph (b) of this section for that air pollutant shall be deemed to significantly affect the air quality of the onshore area for VOC.

(e) *Controls required.* (1) The projected emissions of any air pollutant which significantly affect the air quality of an onshore area shall be reduced through the application of BACT.

(2) The lessee shall submit a compliance schedule for the application of BACT. If it is necessary to cease operations to allow for the installation of emission controls, the lessee may apply for a suspension of operations under the provisions of § 250.12.

(f) *Review of facilities with emissions below the exemption amount.* If, during the review of the information required under paragraph (a)(6) of this section, the Director determines or an affected State submits information to the Director which demonstrates, in the judgment of the Director, that projected emissions from an otherwise exempt facility will, either individually or in combination with other facilities in the area, significantly affect the air quality of an onshore area, then the Director shall require the lessee to submit additional information to determine whether control measures are necessary. The lessee shall be given the opportunity to present information to the Director which demonstrates that the exempt facility is not significantly affecting the air quality of an onshore area of the State.

(g) *Emission monitoring requirements.* The lessee shall monitor, in a manner approved or prescribed by the Director, emissions from the facility following the installation of emission controls. The lessee shall submit this information, in a manner and form approved or prescribed by the Director, with the monthly report of operations prescribed under § 250.93.

(h) *Collection of meteorological data.* The Director may require the lessee to collect, for a period of time and in a manner approved or prescribed by the Director, and submit meteorological data from a facility.

[45 FR 15145, Mar. 7, 1980]

### § 250.58 Reimbursement to lessees.

(a) After the delivery to the Director of geological data, analyzed geological information, interpreted geological information, geophysical data, processed geophysical information, reprocessed geophysical information, and interpreted geophysical information selected by the Director, and upon receipt of a request for reimbursement and a determination by the Director that the requested reimbursement is proper, the lessee or third party shall be reimbursed for the reasonable costs of reproducing the selected information and data at the lessee's or third party's lowest rate, or at the lowest commercial rate established in the area, whichever is less.

(b) After the delivery to the Director of processed or reprocessed geophysical information selected and retained by the Director, and upon receipt of a request for reimbursement and a determination by the Director that the requested reimbursement is proper, the lessee or third party shall be reimbursed for the reasonable costs attributable to processing and reprocessing such information (as distinguished from the cost of data acquisition), but only if the processing or reprocessing was in the form and manner of processing other than that used in the normal conduct of the lessee's business at the request of the Director.

(c) Requests for reimbursement shall identify processing and reprocessing costs separate from acquisition costs.

(d) The lessee shall not be reimbursed for the costs of analyzing geological information or for interpreting geological or geophysical information.

[47 FR 25331, June 11, 1982]

## MEASUREMENT OF PRODUCTION AND COMPUTATION OF ROYALTIES

### § 250.60 Measurement of oil.

The lessee shall measure, record, store, and transfer all oil produced in accordance with practices and procedures approved or prescribed by the Director. The quantity and quality of all oil production shall be determined and reported in accordance with the standard practices, procedures, and specifications generally used by the industry and approved by the Director.

### § 250.61 Measurement of gas.

The lessee shall measure all gas production, including gas vented or flared, in accordance with methods approved by the Director. The measured volumes shall be adjusted to a standard pressure base of 10 ounces above the atmospheric pressure of 14.4 pounds per square inch; to a standard temperature of 60 degrees Fahrenheit; and allow for deviation from Boyle's Law. If gas is being disposed of at a different pressure base, the Director may require that gas volumes be adjusted to conform to this base.

### § 250.63 Quantity basis for substances extracted from gas.

(a) The primary basis for computing the quantity of casinghead or natural gasoline, butane, propane, or other substances extracted from gas is the monthly net output of the plant at which the substances are manufactured. For purposes of this section, "net output" is the quantity of each substance that the plant produces.

(b)(1) When the net output of a plant is derived from the gas obtained from only one lease, the quantity of substances on which computations of royalty and net profit shares for the lease are based is the net output of the plant.

(2) When the net output of a substance from a plant is derived from gas obtained from several leases producing gas of uniform content, the proportion of net output of the substance allocable to each lease as a basis for computing royalty and net profit shares will be determined by dividing the amount of gas delivered to the plant from each lease by the total amount of gas delivered from all leases.

(3) When the net output of a substance from a plant is derived from gas obtained from several leases producing gas of diverse content, the proportion of net output of the substance allocable to each lease as a basis for computing royalty and net profit shares will be determined by multiplying the amount of gas delivered to the plant from the lease by the substance con-

tent of the gas, and dividing the arithmetical product thus obtained by the sum of the similar arithmetical products separately obtained for all leases from which gas is delivered to the plant.

### § 250.68 Commingling production.

Subject to such conditions as the Director may prescribe for the measurement and allocation of production, the Director may authorize the lessee to move production from the leased area to a central point for purposes of treating, measuring, and storing. In moving such production, the lessee may commingle the production from different wells, leased areas, pools, and fields which it operates with production from other operators. The central point may be at any convenient place approved or prescribed by the Director.

### § 250.69 Measurement of sulphur.

For the purpose of computing royalty, the measurement of sulphur shall be on such basis and shall conform to such standards as the Director may approve or prescribe.

## INVESTIGATIONS

### § 250.70 Reports and investigations of apparent violations.

Any person may report an apparent violation or failure to comply with any provision of the Act, or any provision of a lease, license, or permit issued pursuant to the Act, or any provision of any regulation or order issued under the Act. When a report of an apparent violation has been received, or when an apparent violation has been detected by Minerals Management Service personnel, the matter will be investigated and the party will be advised of the matter under investigation.

### § 250.71 Reports on investigations.

(a) Reports of the results of any investigation conducted by the Minerals Management Service, or received from any other Agency, which indicate that a violation under the Act may have occurred, must be forwarded to the official of the Minerals Management Service designated by the Director (referred to in this and subsequent sections as the "Director's designee"). The Director's designee shall review the reports.

(b) If the Director's designee determines that there is insufficient evidence to indicate that a violation probably occurred, the case will be returned to the originating office for further investigation or the case will be closed. The case will be closed when: (1) The Director's designee's review establishes that a violation did not occur; (2) the violator cannot be identified; or (3) although there is sufficient evidence to indicate that a violation occurred, there appears to be little likelihood of discovering additional relevant facts to justify further investigation.

(c) If the Director's designee determines that there is sufficient evidence to indicate that a violation probably occurred, a case file will be prepared and forwarded to a Reviewing Officer for further action.

[44 FR 61892, Oct. 26, 1979; 45 FR 20465, Mar. 28, 1980; 45 FR 37818, June 5, 1980]

### § 250.72 Knowing and willful violations.

When the Director's designee determines that there is sufficient evidence to indicate that a knowing and willful violation may have occurred, the Director's designee will prepare a case file and forward it through the office of the Solicitor to the Department of Justice.

## REMEDIES AND PENALTIES

### § 250.80 Remedies and penalties.

### § 250.80-1 Remedies.

(a)(1) The Director shall designate one or more senior employees of the Minerals Management Service, to act as Reviewing Officer(s).

(2) The Reviewing Officer shall have no other responsibility, direct or supervisory, for the investigation or prosecution of cases.

(3) The Reviewing Officer shall decide each case on the basis of the evidence in the case file and shall have no prior connection with the case. The Reviewing Officer will be solely re-

sponsible for the decision made in each case.

(4) The Reviewing Officer is authorized to administer oaths and issue subpoenas, to the extent provided by the Act, necessary to conduct a hearing.

(5) The Reviewing Officer is authorized to assess civil penalties and, when appropriate, to recommend the initiation of criminal proceedings.

(b)(1) When a case file is received, the Reviewing Officer shall make a preliminary examination of the material submitted.

(2) If, on the basis of the preliminary examination of the evidence in a case file, the Reviewing Officer determines that there is insufficient evidence or that there is any other reason which would make further action inappropriate, the Reviewing Officer shall return the case to the Director's designee with a written statement indicating the reason for this action. The Director's designee may close the case or cause a further investigation of the alleged violation to be conducted with a view toward resubmittal of the case to the Reviewing Officer.

(3) If, on the basis of the preliminary examination of the case file, the Reviewing Officer confirms that the evidence indicates that a violation may have occurred, the Reviewing Officer shall notify the party, in writing, of:

(i) The alleged violation citing the applicable provision of the Act, or the applicable term of a lease, license, or permit issued pursuant to the Act, or the applicable provision of a regulation or order issued under the Act upon which the action is based;

(ii) The general nature of the procedures that will be followed for evaluating the party's responsibility for the alleged violation and for assessing and collecting a penalty should it be determined that the party is responsible for the violation;

(iii) The amount of penalty that appears would be appropriate in the event it is determined that the party is responsible for the alleged violation, based upon the material then available to the Reviewing Officer;

(iv) The party's right to examine the material in the case file and to have a copy of all written documents provided upon request, except those which would, in a civil proceeding, disclose or lead to the disclosure of a confidential informant; and

(v) The fact that, subject to the provisions of paragraph (d)(2) of this section, the party has a right to a hearing before the Reviewing Officer prior to any finding of fact regarding the alleged violation.

(4) If, at any time, the Reviewing Officer determines that the addition of another person to the proceedings is necessary or desirable, the Reviewing Officer shall notify and provide the additional party with the information described in paragraph (b)(3) of this section.

(c) A party has the right to be represented by counsel, qualified to practice before the Department under 43 CFR Part 1, at all stages of the proceeding. After receiving notification that a party is represented by counsel, the Reviewing Officer shall direct all further communications to the counsel.

(d)(1) Within 30 working days after receipt of a notice pursuant to paragraph (b)(3) of this section, the party, or counsel for the party, may: (i) Request a hearing before the Reviewing Officer; (ii) provide any written evidence and arguments in lieu of a hearing; or (iii) pay the amount specified in the notice. A request for a hearing before the Reviewing Officer must be in writing, and must specify the particular issues which are in dispute. Failure to specify a nonjurisdictional issue will preclude its consideration.

(2) The right to a hearing before the Reviewing Officer shall be waived if the party does not submit a request for a hearing to the Reviewing Officer within 30 working days after receiving the notice described in paragraph (b)(3) of this section unless the Reviewing Officer grants the party additional time to submit a request for a hearing.

(3) The Reviewing Officer shall promptly schedule all hearings which are requested. The Reviewing Officer shall grant any delays or continuances which the Reviewing Officer determines to be necessary or desirable in the interest of obtaining a fair resolution of the case.

(4) A party requesting a hearing before a Reviewing Officer may amend the specification of the nonjurisdictional issues in dispute at any time up to 10 working days before the scheduled hearing. Nonjurisdictional issues raised less than 10 working days before the scheduled hearing date may be presented only at the discretion of the Reviewing Officer.

(e) Prior to a hearing, the party or counsel for the party may examine all the written evidence in the case file, except material that would, in a civil proceeding, disclose or lead to the disclosure of the identity of a confidential informant. Other evidence or material, such as blueprints, sound or videotapes, oil samples, and photographs may also be examined in the Reviewing Officer's office. However, the Revewing Officer may provide for examination or testing of the evidence at other locations, if there are adequate safeguards to prevent loss or tampering with the evidence.

(f)(1) In addition to information treated as confidential under paragraph (d) of this section, confidential treatment shall be accorded to all or a portion of any document at the request of the person supplying the information if the information is:

(i) Confidential financial information, trade secrets, or other material exempt from disclosure under the Freedom of Information Act (5 U.S.C. 552);

(ii) Information required to be held in confidence by the regulations in this Chapter II or 18 U.S.C. 1905; or

(iii) Information that is otherwise exempt by law from disclosure.

(2) The person desiring confidential treatment for information must submit a written request to the Reviewing Officer stating the reasons justifying nondisclosure. Failure to make a request at the time a document is submitted may result in the document being considered as nonconfidential and subject to release.

(3) Confidential material will not be considered by the Reviewing Officer in reaching a decision unless:

(i) It has been furnished by a party, or

(ii) It has been furnished pursuant to a subpoena.

(g)(1) When a hearing is requested in accordance with (d)(1) of this section, the hearing will be held in the office of the Reviewing Officer, or at some other convenient location selected or approved by the Reviewing Officer.

(2) A party requesting a hearing in accordance with (d)(1) of this section may request that the Director's designee transfer the case to another Reviewing Officer, or that the hearing be held at a location other than the office of the Reviewing Officer. The request must be in writing and state the reasons why the requested action is necessary or desirable. Action on a request for the transfer of a case to a different Reviewing Officer is subject to the discretion of the Director's designee.

(h)(1) The testimony of any witness may be presented either through a personal appearance or through a written statement. The Reviewing Officer, upon request of a party, may assist in obtaining the testimony of a witness by personal appearance. A request for such assistance must be in writing and must state the reasons why a written statement by the witness would be inadequate, the issue or issues to which the testimony would be relevant, and the substance of the expected testimony. If the Reviewing Officer determines that the personal appearance of the witness will materially aid in the decision on the case, the Reviewing Officer will seek to obtain the personal appearance of the witness.

(i)(A) The Reviewing Officer is authorized to issue subpoenas requiring the attendance of witnesses at hearings or for the taking of depositions.

(B) Subpoenas will be issued in a manner and format approved by the Director.

(C) The application for a subpoena shall be filed in the office of the Reviewing Officer.

(D) The original subpoena, bearing a certificate of service, shall be filed with the Reviewing Officer.

(E) A witness may be required to attend a hearing or deposition at a place not more than 100 miles from the place of service.

(ii)(A) Witnesses subpoenaed by any party shall be paid the same fees and mileage paid for similar services in the District Courts of the United States. The witness fees and mileage shall be paid by the party at whose insistence the witness appears.

(B) Any witness who attends a hearing or the taking of a deposition at the request of the party, without having been subpoenaed to do so, shall be entitled to the same mileage and attendance fees paid to a subpoenaed witness. The witness fees and mileage shall be paid by the party at whose insistence the witness appears. The provisions of this paragraph are not applicable to Federal Government employees who are called as witnesses by the Federal Government.

(2) In cases where an individual cannot be required to appear as a witness, the Reviewing Officer may move the hearing to the location of the desired witness, accept a written statement, or accept a stipulation in lieu of testimony.

(i)(1) The Reviewing Officer must conduct a fair and impartial proceeding in which the party is given a full opportunity to be heard.

(i) At the outset of the hearing, the Reviewing Officer shall insure that the party is aware of the nature of the proceedings and of the alleged violation.

(ii) Material in the case file which is pertinent to the issues, shall be presented. The party has the right to respond to or rebut this material. The party may offer any facts, statements, explanation, documents, sworn or unsworn testimony, or other exculpatory items which bear on the issues or which may be relevant to the amount of the penalty to be assessed if the party is found to be guilty of the alleged violation. The Reviewing Officer may require the authentication of any written exhibit or statement.

(iii) After the evidence in the case file has been presented, the party may present argument on the issues in the case. The party may request an opportunity to submit additional written testimony for consideration by the Reviewing Officer. The Reviewing Officer shall allow a reasonable time for submission of additional written testimony and shall specify the date by which it must be received. If the statement is not received within the time prescribed or within the limits of any extension of time granted by the Reviewing Officer, the Reviewing Officer shall render a decision on the basis of the record in the case file.

(iv) At the close of the party's presentation of evidence, the Reviewing Officer shall allow the introduction of rebuttal evidence. The Reviewing Officer shall allow the party an opportunity to respond to any rebuttal evidence that is submitted.

(v) The Reviewing Officer may take notice of matters which are subject to a high degree of indisputability and are commonly known in the community or are ascertainable from readily available sources of known accuracy. Prior to taking notice of a matter, the Reviewing Officer shall give the party an opportunity to show why notice should not be taken. In any case in which such notice is taken, the Reviewing Officer shall place in the record a written statement on the matters to which notice was taken and the basis for taking such notice. The Reviewing Officer's statement shall indicate that the party consented to notice being taken or shall include a summary of the party's objections to notice being taken of a specific matter.

(2) In reviewing evidence, the Reviewing Officer is not bound by strict rules of evidence. In evaluating the evidence presented, the Reviewing Officer shall give due consideration to the reliability and relevance of each item of evidence.

(j)(1) A verbatim transcript of hearings before a Reviewing Officer will not normally be prepared. The Reviewing Officer shall prepare notes on the material and points raised by the party in sufficient detail to permit a full and fair review and resolution of the case, should it be appealed.

(2) A party may, at its own expense, cause a verbatim transcript to be made by a court reporter. If a verbatim transcript is made, and the Reviewing Officer's decision is appealed, the party shall submit two copies of the verbatim transcript with the appeal to the Director's designee. The verbatim

transcript will be included in the case record.

(k)(1) The decision called for in paragraph (j)(1)(iii) of this section shall be issued in writing, and shall include:

(i) The Reviewing Officer's conclusions and the basis for those conclusions; and

(ii) The appropriate rule, order, sanction, relief, or denial thereof.

Any decision to assess a penalty shall be based upon substantial evidence in the record. If the Reviewing Officer finds that there is not substantial evidence in the record establishing that the alleged violation probably occurred, the Reviewing Officer shall dismiss the case and remand it to the Director's designee. A dismissal is without prejudice to the Director's designee's right to refile the case and have it reheard if additional evidence is obtained. A dismissal following a rehearing is final and with prejudice.

(2) In assessing a penalty, the Reviewing Officer shall review the record of any prior violations by the party. The Reviewing Officer's decision shall contain a statement advising the party of the right to an administrative appeal to the Director pursuant to Part 290 of this chapter. The party shall be advised that a failure to submit an appeal within the prescribed time will bar its consideration, and that failure to appeal on the basis of a particular issue will constitute a waiver of that issue in any subsequent proceeding. An appeal from any interim ruling of the Reviewing Officer shall be reserved and considered only at the time of and as part of an appeal from the Reviewing Officer's final decision.

(l)(1) Any appeal from the decision of the Reviewing Officer and any supporting argument must be submitted by a party to the Reviewing Officer within 30 days from the date of receipt of the decision. The appellant shall provide copies of the notice of appeal and supporting brief to the Director. The only issues which will be considered on appeal are those issues specified in the notice of appeal which were properly raised before the Reviewing Officer and jurisdictional questions.

(2) The failure to file a notice of appeal within the prescribed time limit shall result in the action of the Reviewing Officer becoming the final action of the U.S. Department of the Interior in the case.

(m)(1) The appeal of a decision of the Reviewing Officer and supporting brief, and any comments which the Reviewing Officer desires to submit regarding the appeal must be forwarded to the Director within 30 working days following receipt of the notice of appeal and any supporting brief. The Reviewing Officer shall have a longer period of time to submit comments regarding an appeal when the appellant requests that the Director grant additional time for submitting supporting arguments. The Reviewing Officer shall provide the appellant with a copy of all comments submitted to the Director.

(2)(i) The Director may affirm, reverse, or modify the Reviewing Officer's decision, or remand the case for new or additional proceedings.

(ii) The Director may increase, remit, mitigate, or suspend, in whole or in part, any penalty assessed by the Reviewing Officer.

(iii) When the action of the Director includes the increase, remission, mitigation, or suspension, in whole or in part, of a penalty assessed by the Reviewing Officer, the appellant and the Reviewing Officer shall be advised of any conditions placed upon that action.

(iv) The Director shall issue a written decision in each case. Copies of the Director's decision are to be provided to the appellant and the Reviewing Officer.

(v) In the absence of an appeal from the Director's decision pursuant to 30 CFR Part 290, the Director's decision on an appeal shall be final.

(n)(1) At any time prior to final Minerals Management Service action in a civil penalty case, a party may petition to reopen the hearing on the basis of newly discovered evidence.

(2) Petitions to reopen a case must be in writing. Petitions shall describe the newly found evidence and state why the evidence would probably produce a different result favorable to the petitioner. The petitioner must

state whether the evidence was known to the petitioner at the time of the hearing and, if not, why the newly found evidence could not have been discovered during the original proceedings. The party must submit the petition to the Reviewing Officer and provide a copy to the Director's designee.

(3) The Director's designee may file comments in opposition to the petition. If the Director's designee files comments, a copy of the comments shall be provided to the petitioner.

(4) The Reviewing Officer will consider a petition to reopen a case unless an appeal has been filed or the time period for filing an appeal has expired and no appeal was filed. In those cases where an appeal has been timely filed, a petition to reopen a case will be considered by the Director.

(5) The Reviewing Officer's decision on a petition to reopen a case will be decided on the basis of the current case record, the contents of the petition, and the comments, if any, submitted by the Director's designee pursuant to paragraph (n)(3) of this section.

(6) A petition to reopen a case will be granted only when the Reviewing Officer determines that newly found evidence, that would have a direct and material bearing on the issue(s) of the case, is described in the petition and when the petitioner provides a valid explanation as to why the new evidence was not and could not have been produced previously. A decision on a petition to reopen a case shall be rendered in writing.

(7) The denial of a petition to reopen a case shall be final and may not be appealed in an action separate from the appeal of the case pursuant to subsection (m) of this section or Part 290 of this chapter.

(o)(1) The Director's designee shall collect civil penalties assessed by a Reviewing Officer, the Director, or the Department of the Interior's Board of Land Appeals.

(2) Payment of a civil penalty may be made by check or postal money order payable to the Minerals Management Service.

(3) Within 30 calendar days after the issuance of the Reviewing Officer's decision in a case, the party must submit payment of any assessed penalty to the Director's designee. Payment is to be made even though an appeal is pending. Failure to make timely payment will result in the collection of the amount assessed plus interest from the date of assessment until the date of payment. Interest shall be calculated at the average of the highest rate for commercial and finance company paper of maturities of 180 days or less obtaining on each of the days included within the period for which interest is due. Such failure may also result in the initiation of additional enforcement proceedings, including, if appropriate, cancellation of the lease or permit under § 250.12 of this part.

[44 FR 61892, Oct. 26, 1979; 45 FR 20465, Mar. 28, 1980; 45 FR 37818, June 5, 1980; as amended at 47 FR 28370, June 30, 1982]

### § 250.80-2 Penalties.

(a)(1) Pursuant to subsection 24(b) of the Act, if any person fails to comply with any provision of the Act, or any term of a lease, license, or permit issued pursuant to the Act, or any regulation or order issued under the Act, after notice of such failure and expiration of any reasonable period allowed for corrective action, such person shall be liable for a civil penalty of not more than $10,000 for each day of the continuance of such failure. The Director may assess, collect, and compromise any such penalty. No penalty shall be assessed until the person charged with a violation has been given an opportunity for a hearing pursuant to § 250.80 of this part.

(2)(i) Pursuant to subsection 24(c) of the Act, the penalties set forth in paragraph (a)(2)(ii) will be assessed on any party, upon conviction, who knowingly and willfully:

(A) Violates any provision of the Act, any term of a lease, license, or permit issued pursuant to the Act, or any regulation or order issued under the authority of the Act designed to protect health, safety, and environment, or to conserve natural resources;

(B) Makes any false statement, representation, or certification in any application, record, report, or other document filed or required to be maintained under the Act;

(C) Falsifies, tampers with, or renders inaccurate any monitoring device or method of record required to be maintained under the Act; or

(D) Reveals any information and data required to be kept confidential by the Act.

(ii) Any person convicted of a violation described in paragraphs (a)(2)(i) (A), (B), (C), or (D) of this section shall be punished by a fine of not more than $100,000 or by imprisonment of not more than 10 years, or both.

(iii) For each day that a violation described under paragraph (a)(2)(i)(A) of this section continues, or for each day that any monitoring device or data recorder remains inoperative or inaccurate because of any activity described in paragraph (a)(2)(i)(C) of this section, there shall be a separate violation.

(3) Whenever a corporation or other entity is subject to prosecution for a violation described under paragraphs (a)(2)(i) (A), (B), (C), or (D) of this section, any officer or agent of such corporation or entity who knowingly and willfully authorized, ordered, or carried out the proscribed activity shall be subject to the same fines or imprisonment, or both, as provided for under paragraph (a)(2)(ii) of this section.

(4)(i) If a violation of law or regulation is subject to both a civil and a criminal penalty, the Director's designee is authorized to decide whether to institute civil penalty proceedings or to recommend referral of the case through the Office of the Solicitor to the Department of Justice for the institution of an enforcement action in the appropriate Federal Court, or both.

(ii) The Director's designee shall decide, within 30 working days of an apparent violation or within 30 working days of a decision to refile or resubmit a case, whether the apparent violation will be referred through the Office of the Solicitor to the Department of Justice for investigation into whether criminal proceedings should be initiated. When a case is referred through the Office of the Solicitor to the Department of Justice, the Director's designee shall advise the alleged violator of that action and shall warn the alleged violator that, regardless of the outcome of any criminal proceedings, civil penalty proceedings may be initiated.

(5) A decision by the Department of Justice not to institute criminal proceedings in the appropriate Federal Court shall not preclude the Director's designee from initiating or continuing the conduct of civil penalty proceedings in the case.

(6) The remedies and penalties prescribed in this section shall be concurrent and cumulative, and the exercise of one shall not preclude the exercise of the others. Further, the remedies and penalties prescribed in this section shall be in addition to any other remedies and penalties afforded by any other law or regulation.

[44 FR 61892, Oct. 26, 1979; 45 FR 20465, Mar. 28, 1980; 45 FR 37818, June 5, 1980; 48 FR 44777, Sept. 30, 1983]

### § 250.81 Appeals.

OCS Orders, other orders, or decisions issued under the regulations in this part may be appealed in accordance with the provisions of Part 290 of this chapter. The filing of an appeal shall not suspend the requirement for compliance with an order or decision.

### § 250.82 Judicial review.

Nothing contained in this part shall be construed to prevent any interested party from seeking judicial review as authorized by law.

## REPORTS TO BE MADE BY ALL LESSEES (INCLUDING OPERATORS)

### § 250.90 General requirements.

Information, required to be submitted pursuant to the regulations in this part, shall be furnished in the manner and form prescribed in the regulations in this part or as ordered by the Director. Copies of forms can be obtained from the Director and must be filled out completely and filed punctually with the Director.

**§ 250.92 Sundry notices and reports on wells.**

(a) All notices of the lessee's intention to fracture, treat, acidize, repair, multiple complete, abandon, change plans, or to engage in similar activities, and all subsequent reports pertaining to such operations shall be submitted on Form 9-331 in accordance with § 250.38(b)(1) of this part. The Director will advise the lessee concerning the number of copies of Form 9-331 that are to be submitted. Prior to commencing such operations, written approval must be received from the Director.

(b) Form 9-331 shall contain:

(1) A detailed statement of the proposed work for repairing (other than work incidental to ordinary well operation), acidizing, or stimulating production by other methods, perforating, sidetracking, squeezing with mud or cement, or commencing any operations (other than those covered by § 250.36 of this part) that will materially change the approved program for drilling a well or will alter the condition of a completed well.

(2) A detailed report of all the work done and the results obtained. The report shall set forth the amount and rate of production of oil, gas, and water before and after the completion of work and shall include a complete statement describing the methods used and giving the dates on which the work was accomplished.

(3) A detailed statement of the proposed work for abandonment of any well. For all wells, the statement shall describe the proposed work (including, by depths, the kind, location, and length of plugs), and plans for mudding, cementing, shooting, testing, and removing casing, and other pertinent information. The statement as to a producible well shall set forth the reasons for abandonment and the amount and date of last production.

(4) A detailed report describing the manner in which the abandonment or plugging work was accomplished, including the nature and quantities of materials used in the plugging and the location and extent, by depths, of casing left in the well, and the volume of mud fluid used. If an attempt was made to cut and pull any casing string, a description of the methods used and results obtained must be included.

(c) This reporting requirement has been approved by the Office of Management and Budget in accordance with the Federal Reports Act of 1942 (42-R1424).

**§ 250.93 Monthly report of operations.**

(a) A separate report of operations for each lease must be made on Form 9-152 for each calendar month, beginning with the month in which drilling operations are commenced, and must be filed in duplicate with the Director on or before the 20th day of the succeeding month, unless an extension of time for the filing of the report is granted by the Director. The report must be submitted each month until the lease is terminated or until the Director authorizes discontinuance of the report.

(b) The report on Form 9-152 shall disclose accurately:

(1) All operations conducted on each well during each month;

(2) The status of operations on the last day of the month; and

(3) A general summary of the status of operations on the leased area.

(c) The report shall show for each calendar month:

(1) Each well, listed separately;

(2) The number of days each active well produced, the nature of production (whether oil or gas) and the number of days each input well was used for injection service;

(3) The quantity of oil, condensate, gas, and water produced;

(4) The total depth of each active or suspended well;

(5) The name, character, and depth of each formation drilled during the month, the date each depth was reached, (special attention should be given to the names and depths of important formation changes and the contents of formations), and the dates and results of any tests, such as production or water shutoff;

(6) The amount, grade, and size of any casing run since the last report; and

(7) The date and reason for every shutdown and all other noteworthy in-

formation on operations not specifically provided for in the form.

(d) If no runs or sales were made during the calendar month, this must be stated in the report.

(e) This reporting requirement has been approved by the Office of Management and Budget in accordance with the Federal Reports Act of 1942 (42-R1236).

[44 FR 61892, Oct. 26, 1979; 45 FR 20465, Mar. 28, 1980]

### § 250.95 Well completion or recompletion report and log.

(a) All reports and logs of well completions or recompletions shall be submitted in duplicate on or attached to Form 9-330 in accordance with § 250.38(b)(1) of this part. The form shall contain: a complete and accurate log and report of all operations on the well as specified on the form; geologic markers and all important zones of porosity and contents thereof; cored intervals and all drill-stem tests including depth interval tested, cushion used, and the time the tool was open; flowing and shut-in pressures; and recoveries. Duplicate copies of logs compiled for geologic information from core or formation samples shall be filed in addition to the regular log. If not previously furnished, duplicate copies of composites of multiple runs of all well bore surveys, including electric, radioactive, and other logs, temperature surveys, and directional surveys shall be attached. (Such copies are in addition to field prints filed pursuant to § 250.38(b)(3) of this part.)

(b) This reporting requirement has been approved by the Office of Management and Budget in accordance with the Federal Reports Act of 1942 (42-R0355).

### § 250.96 Special forms or reports.

When special forms or reports, other than those referred to in the regulations in this part, are deemed necessary, instructions for the filing of such forms or reports will be given by the Director.

## PART 251—GEOLOGICAL AND GEOPHYSICAL (G & G) EXPLORATIONS OF THE OUTER CONTINENTAL SHELF

Sec.
251.0 Authority for information collection.
251.1 Purpose.
251.2 Definitions.
251.3 Administrative authority and applicability.
251.3-1 Administrative authority.
251.3-2 Functions of Director.
251.3-3 Geological and geophysical activities under a lease.
251.3-4 Geological and geophysical activities not under a lease.
251.3-5 General requirements of notices and permits.
251.4 Geological and geophysical activities requiring notices or permits.
251.4-1 Geological and geophysical exploration for mineral resources.
251.4-2 Geological or geophysical scientific research.
251.5 Applying for notices or permits.
251.5-1 Permit forms.
251.5-2 Notices.
251.5-3 Filing locations for permits to conduct exploration for mineral resources.
251.5-4 Filing locations for notices or permits to conduct scientific research.
251.6 Test drilling activities.
251.6-1 Permit or notice requirements for shallow test drilling.
251.6-2 Permit requirements for a deep stratigraphic test.
251.6-3 Group participation in test drilling activities.
251.6-4 Bonds.
251.6-5 Duration of exploration activities.
251.7 Inspection and reporting of progress and results of activities conducted under permits.
251.7-1 Inspection and observation of exploration activities.
251.7-2 Progress report on activities conducted under a permit.
251.7-3 Final report on activities conducted under a permit.
251.8 Suspension and cancellation of authority to conduct activities under permit.
251.9 Penalties.
251.10 Appeals.
251.11 Inspection, selection, and submission of geological information and data.
251.12 Inspection, selection, and submission of geophysical information and data.
251.13 Reimbursement to permittees.
251.14 Disclosure of information and data submitted under permits.

Sec.
251.14-1 Disclosure of information and data to the public.
251.14-2 Disclosure to independent contractors.
251.14-3 Sharing of information with affected States.
251.14-4 Disclosure of information and data relating to specific contractual commitments.

AUTHORITY: OCS Lands Act, 43 U.S.C. 1331 et seq., as amended, 92 Stat. 629; National Environmental Policy Act of 1969, 42 U.S.C. 4332 et seq.(1970); Coastal Zone Management Act of 1972, as amended, 16 U.S.C. 1451 et seq.; § 251.13 also issued under Pub. L. 99-190 making continuing appropriations for Fiscal Year 1986, and for other purposes.

SOURCE: 45 FR 6344, Jan. 25, 1980, unless otherwise noted.

EDITORIAL NOTE: Nomenclature changes to this part appear at 47 FR 28369, June 30, 1982.

### § 251.0 Authority for information collection.

(a) The information collection requirement contained in 30 CFR 251.13 has been approved by the Office of Management and Budget under 44 U.S.C. 3507 and assigned clearance number 1028-0039. The information is being collected and will be used to determine eligibility for reimbursement from the Government for certain costs. The obligation to respond is required to obtain a benefit.

(b) The information collection requirement contained in § 251.7-2 has been approved by the Office of Management and Budget under 44 U.S.C. 3504(h) and assigned clearance number 1010-0036. The information is being collected and will be used to monitor the progress of activities carried out under an offshore permit. The obligation to respond is mandatory.

(c) The information collection requirements contained in 30 CFR 251.6 do not require approval by the Office of Management and Budget under 44 U.S.C. 3504(h) because there are fewer than 10 respondents annually.

(d) The information collection requirements contained in 30 CFR 251.11 and 251.12 have been approved by the Office of Management and Budget under 44 U.S.C. 3504(h) and assigned clearance number 1010-0034. The information is being collected for regulatory compliance. This information will be used to inspect and select geological and geophysical data and information collected under a Federal permit offshore. The obligation to respond is mandatory under section 26 of the Outer Continental Shelf Lands Act (43 U.S.C. 1352).

(e) The information collection requirements contained in 30 CFR 251.6 have been approved by the Office of Management and Budget under 44 U.S.C. 3507 and assigned clearance number 1010-0049. The information is being collected for regulation compliance. This information will be used to analyze and evaluate planned drilling activities of permittees on the Federal OCS. The obligation to respond is mandatory.

[47 FR 25331, June 11, 1982, as amended at 48 FR 37968, Aug. 22, 1983; 48 FR 43324, Sept. 23, 1983; 48 FR 46026, Oct. 11, 1983; 48 FR 55457, Dec. 13, 1983]

### § 251.1 Purpose.

The Act authorizes the Secretary to prescribe rules and regulations necessary to carry out the provisions of the Act. The primary purpose of the regulations in this part is to prescribe policies, procedures, and requirements for conducting geological and geophysical activities not authorized under a lease on the Outer Continental Shelf (OCS). These activities may take place on unleased lands or on lands under lease to a third party. These activities are limited to geological and geophysical exploration for mineral resources and geological or geophysical scientific research which involves the use of solid or liquid explosives or drilling activities. The requirements of the regulations in this part implement the provisions of sections 5, 8(g), 11 (a) and (g), 19, 24, and 26 of the Act. Federal agencies are exempt from the regulations in this part.

### § 251.2 Definitions.

When used in this part, the following terms shall have the meaning given below:

(a) "Act" means the Outer Continental Shelf Lands Act, as amended (43 U.S.C. 1331 *et seq.*).

(b) "Affected local government" means the principal governing body of a locality which is in an affected State and is identified by the Governor of that State as a locality which will be significantly affected by oil and gas activities on the OCS.

(c) "Affected State" means, with respect to any program, plan, lease sale, or other activity proposed, conducted, or approved pursuant to the provisions of the Act, any State:

(1) The laws of which are declared, pursuant to section 4(a)(2)(A) of the Act, to be the law of the United States for the portion of the OCS on which such activity is, or is proposed to be, conducted;

(2) Which is, or is proposed to be, directly connected by transportation facilities to any artificial island or installation or other device permanently or temporarily attached to the seabed;

(3) Which is receiving, or in accordance with the proposed activity, will receive oil for processing, refining, or transshipment which was extracted from the OCS and transported directly to the State by means of vessels or by a combination of means including vessels;

(4) Which is designated by the Secretary as a State in which there is a substantial probability of significant impact on or damage to the coastal, marine, or human environment or a State in which there will be significant changes in the social, governmental, or economic infrastructure resulting from the exploration, development, and production of oil and gas anywhere in the OCS; or

(5) In which the Secretary finds that because of such activity there is, or will be, a significant risk of serious damage, due to factors such as prevailing winds and currents, to the marine or coastal environment in the event of any oil spill, blowout, or release of oil or gas from vessels, pipelines, or other transshipment facilities.

(d) "Analyzed geological information" means data collected under a permit or a lease which have been analyzed. Analysis may include, but is not limited to, identification of lithologic and fossil content, core analyses, laboratory analyses of physical and chemical properties, well logs or charts, results and data obtained from formation fluid tests, and descriptions of hydrocarbon occurrences or hazardous conditions.

(e) "Coastal environment" means the physical, atmospheric, and biological components, conditions, and factors which interactively determine the productivity, state, condition, and quality of the terrestrial ecosystem from the shoreline inward to the boundaries of the coastal zone.

(f) "Coastal zone" means the coastal waters (including the lands therein and thereunder) and the adjacent shorelands (including the waters therein and thereunder), strongly influenced by each other and in proximity to the shorelines of the several coastal States. The coastal zone includes islands, transition and intertidal areas, salt marshes, wetlands, and beaches. The coastal zone extends seaward to the outer limit of the United States territorial sea and extends inland from the shoreline to the extent necessary to control shorelands, the uses of which have a direct and significant impact on the coastal waters, and the inward boundaries of which may be identified by the several coastal States, pursuant to the authority of section 305(b)(1) of the Coastal Zone Management Act.

(g) "Coastal Zone Management Act" means the Coastal Zone Management Act of 1972, as amended (16 U.S.C. 1451 *et seq.*).

(h) "Cultural resource" means a site, structure, or object of historical or archeological significance.

(i) "Data" means facts and statistics or samples which have not been analyzed or processed.

(j) "Deep stratigraphic test" means drilling which involves the penetration into the sea bottom of more than 50 feet (15.2 meters) of consolidated rock or a total of more than 300 feet (91.4 meters).

(k) "Director" means the Director of the Minerals Management Service, U.S. Department of the Interior or a subordinate authorized to act on the Director's behalf.

(l) "Exploration" means the process of searching for minerals. Exploration activities include but are not limited to: (1) Geophysical surveys where magnetic, gravity, seismic, or other systems are used to detect or imply the presence of minerals, and (2) any drilling, whether on or off a geological structure.

(m) "Gas" means any fluid, either combustible or noncombustible, which is extracted from a reservoir and which has neither independent shape nor volume, but tends to expand indefinitely; a substance that exists in a gaseous or rarefied state under standard temperature and pressure conditions.

(n) "Geological exploration for mineral resources" means any operation conducted on the OCS which utilizes geological and geochemical techniques, including, but not limited to, core and test drilling, well logging techniques, and various bottom sampling methods to produce information and data on mineral resources, including information and data in support of possible exploration and development activity. The term does not include scientific research.

(o) "Geophysical exploration for mineral resources" means any operation conducted on the OCS which utilizes geophysical techniques, including, but not limited to gravity, magnetic, and various seismic methods, to produce information and data in support of possible exploration and development activity. The term does not include scientific research.

(p) "Geological or geophysical scientific research" means any investigation conducted on the OCS using solid or liquid explosives, or drilling activities for scientific research purposes involving the gathering and analysis of geological or geophysical information and data which are made available to the public for inspection and reproduction at the earliest practicable time.

(q) "Governor" means the Governor of a State, or the person or entity designated by, or pusuant to, State law to exercise the powers granted to a Governor pursuant to the Act.

(r) "Human environment" means the physical, social, and economic components, conditions, and factors which interactively determine the state, condition, and quality of living conditions, employment, and health of those affected, directly or indirectly, by activities occurring on the OCS.

(s) "Hydrocarbon occurrences" means the direct or indirect detection during drilling operations of any liquid or gaseous hydrocarbons by examination of well cuttings, cores, gas detector readings, formation fluid tests, wireline logs, or by any other means. The term does not include background gas, minor accumulations of gas, or heavy oil residues on cuttings and cores.

(t) "Information," when used without a qualifying adjective, includes analyzed geological information, processed geophysical information, interpreted geological information, and interpreted geophysical information.

(u) "Interpreted geological information" means knowledge, often in the form of schematic cross sections and maps, developed by determining the geological significance of data and analyzed geological information.

(v) "Interpreted geophysical information" means knowledge, often in the form of seismic cross sections and maps, developed by determining the geological significance of geophysical data and processed geophysical information.

(w) "Lease" means (1) any form of authorization which is issued under section 8 or maintained under section 6 of the Act and which authorizes exploration for, and development and production of, minerals, or (2) the area covered by such authorization, whichever is required by the context.

(x) "Lessee" means the party authorized by a lease, or an approved assignment thereof, to explore for, develop, and produce the leased deposits in accordance with the regulations in Part 250 of this chapter. The term includes all parties holding such authority by or through the lessee.

(y) "Marine environment" means the physical, atmospheric, and biological components, conditions, and factors which interactively determine the productivity, state, condition, and quality of the marine ecosystem, including the waters of the high seas, the contiguous zone, transitional and intertidal areas, salt marshes, and wetlands within the coastal zone and on the OCS.

(z) "Minerals" includes oil, gas, sulphur, geopressured-geothermal and associated resources, and all other minerals which are authorized by an Act of Congress to be produced from "public lands" as defined in section 103 of the Federal Land Policy and Management Act of 1976 (43 U.S.C. 1702).

(aa) "National Environmental Policy Act" means the National Environmental Policy Act of 1969 (42 U.S.C. 4321 *et seq.*).

(bb) "Notice" means the statement of intent to conduct geological scientific research which involves shallow test drilling activities.

(cc) "OCS Order" means a formal numbered Order, issued by the Director, that implements the regulations contained in this part and specifically applies to operations in an area in the Order.

(dd) "Oil" means any fluid hydrocarbon substance other than gas which is extracted in a fluid state from a reservoir and which exists in a fluid state under the existing temperature and pressure conditions of the reservoir. Oil includes liquefiable hydrocarbon substances such as drip gasoline or other natural condensates recovered or recoverable in a liquid state from produced gas.

(ee) "Operator" means the individual, partnership, firm, or corporation having control or management of operations on the leased area or a portion thereof. The operator may be a lessee, designated agent of the lessee, or holder of rights under an approved operating agreement.

(ff) "Outer Continental Shelf" means all submerged lands which lie seaward and outside the area of lands beneath navigable waters as defined in section 2 of the Submerged Lands Act (43 U.S.C. 1301), and of which the subsoil and seabed appertain to the United States and are subject to its jurisdiction and control.

(gg) "Permit" means the contract or agreement, other than a lease, approved for a specified period of not more than 1 year under which a person acquires the right to conduct: (1) Geological exploration for mineral resources, (2) geophysical exploration for mineral resources, (3) geological scientific research, or (4) geophysical scientific research.

(hh) "Permittee" means the person authorized by a permit issued pursuant to this part to conduct activities on the OCS.

(ii) "Person" means a citizen or national of the United States, an alien lawfully admitted for permanent residence in the United States as defined in 8 U.S.C. 1101(a)(20), a private, public, or municipal corporation organized under the laws of the United States or of any State or territory thereof, and associations of such citizens, nationals, resident aliens, or private, public, or municipal corporations, States, or political subdivisions of States. The term does not include Federal agencies.

(jj) "Pollution contingency plan" means the National Multi-Agency Oil and Hazardous Materials Pollution Contingency Plan or any successor plan thereto.

(kk) "Processed geophysical information" means data collected under a permit or a lease which have been processed. Processing involves changing the form of data so as to facilitate interpretation. Processing operations may include, but are not limited to, applying corrections for known perturbing causes, rearranging or filtering data, and combining or transforming data elements.

(ll) "Secretary" means the Secretary of the Interior or a subordinate authorized to act on the Secretary's behalf.

(mm) "Shallow test drilling" means drilling into the sea bottom to depths less than those specified in the definition of a deep stratigraphic test.

(nn) "Third party" means any person other than a representative of the United States or the permittee.

(oo) "Violation" means a failure to comply with any provision of the Act, or a provision of a regulation or order issued under the Act, or any provision of a lease, license, or permit issued pursuant to the Act.

### § 251.3 Administrative authority and applicability.

### § 251.3-1 Administrative authority.

Exploration or scientific research activities authorized or conducted under this part shall be performed in accordance with the Act, the regulations in this part, OCS Orders, other orders of the Director, and other applicable statutes and regulations, and amendments thereto.

### § 251.3-2 Functions of Director.

The Director shall regulate all operations and other activities under this part and perform all duties prescribed by this part. The Director is authorized to issue OCS Orders and other written and oral orders and to take all other actions necessary to carry out the provisions of this part and to prevent harm or damage to, or waste of, any natural resource (including any mineral deposit in areas leased or not leased), any life (including fish and other aquatic life), property, or the marine, coastal, or human environment. The Director shall confirm oral orders in writing as soon as possible.

### § 251.3-3 Geological and geophysical activities under a lease.

The regulations in this part shall not apply to geological and geophysical exploration conducted by or on behalf of the lessee on a lease on the OCS. Those exploration activities shall be governed by the regulations in Part 250 of this title.

### § 251.3-4 Geological and geophysical activities not under a lease.

The regulations in this part are applicable to permits for geological and geophysical activities issued after or unexpired as of the effective date of this final rule. Notices filed after the effective date of this final rule shall also be subject to the regulations in this part. If the regulations in this part conflict with the provisions of a permit which was issued under regulations published in the FEDERAL REGISTER on June 23, 1976 (41 FR 25893), the requirements of the permit shall govern, except for any requirements limiting the Director's authority to inspect and require the submission of interpretations derived from information and data acquired under those permits issued after January 27, 1978, as established by Part 252 of this title.

### § 251.3-5 General requirements of notices and permits.

(a) Geological or geophysical activities for mineral exploration or scientific research activities authorized under this part shall be conducted so that those activities do not:

(1) Interfere with or endanger operations under any lease issued or maintained pursuant to the Act;

(2) Cause harm or damage to aquatic life;

(3) Cause pollution;

(4) Create hazardous or unsafe conditions;

(5) Unreasonably interfere with or harm other uses of the area; or

(6) Disturb cultural resources.

(b) Any person conducting geological or geophysical activities for mineral exploration or scientific research under this part shall immediately report to the Director when these activities:

(1) Detect hydrocarbon occurrences;

(2) Encounter evironmental hazards which constitute an imminent threat to human activity; or

(3) Adversely affect the environment, aquatic life, cultural resources, or other uses of the area in which the exploration activity is conducted.

(c) Any person conducting shallow test drilling or deep stratigraphic test drilling geological activities under a permit for mineral exploration or scientific research under this part shall utilize the best available and safest technologies which the Director determines to be economically feasible.

(d) Authorization granted under this part to conduct geological and geophysical exploration for minerals or for scientific research shall not confer a right to any discovered oil, gas, or other minerals, or to a lease under the Act.

### § 251.4 Geological and geophysical activities requiring notices or permits.

### § 251.4-1 Geological and geophysical exploration for mineral resources.

Geological or geophysical exploration for mineral resources may not be conducted on the OCS without an approved permit unless such activities are being conducted pursuant to a lease issued or maintained under the Act. Separate permits must be obtained for geological exploration for mineral resources and for geophysical exploration for mineral resources. If the Director disapproves an application, the statement of rejection shall state the reasons for the denial, and shall advise the applicant of those changes needed to obtain approval.

### § 251.4-2 Geological or geophysical scientific research.

Geological or geophysical scientific research may not be conducted by any person on the OCS without an approved permit or filing of a notice unless such activities are being conducted pursuant to a lease issued or maintained under the Act.

(a) Separate permits must be obtained for geological scientific research and for geophysical scientific research which involves the use of solid or liquid explosives or the drilling of a deep stratigraphic test. If the Director disapproves an application, the statement of rejection shall state the reasons for the denial, and shall advise the applicant of the changes needed to obtain approval.

(b) A notice must be filed with the Director at least 30 days prior to the commencement of scientific research activities which involve shallow test drilling. Within 21 days of the filing of the notice, the Director may disapprove the notice by sending a statement of disapproval by certified mail to the person who filed the notice. If the Director disapproves the notice, the statement shall state the reasons for disapproval and shall advise the applicant of recommended changes.

### § 251.5 Applying for notices or permits.

### § 251.5-1 Permit forms.

(a) An application for a permit shall be submitted in a form and manner prescribed and approved by the Director. Each application for a permit shall include:

(1) The name of any person who will conduct the proposed exploration or research activity;

(2) The name of any person who will participate in the proposed exploration or research activity;

(3) The type of exploration or research activity and the manner in which the activity will be conducted;

(4) The location on the OCS where the exploration or research activity will be conducted;

(5) The purpose for conducting the exploration or research activity;

(6) The dates on which the exploration or research activity is proposed to be commenced and completed; and,

(7) Such other relevant information and data as the Director may require.

(b) This reporting requirement has been approved by the Office of Management and Budget in accordance with the Federal Reports Act of 1942 (042-5777002).

### § 251.5-2 Notices.

A notice shall not be on a standardized form, but shall be signed and shall state:

(a) The name of the person conducting or participating in the proposed research;

(b) The type of research and manner in which it will be conducted;

(c) The location, designated on a map, plat, or chart, where the research will be conducted;

(d) The dates, which shall designate a period of not more than 1 year, on which the research activity is proposed to be commenced and completed;

(e) The proposed time and manner in which the information and data resulting from the research will be made available to the public for inspection and reproduction, such time being the earliest practicable time;

(f) An agreement that the information and data resulting from the research will not be sold or withheld for exclusive use; and

(g) The name, registry number, registered owner, and port of registry of vessels used in the operation.

### § 251.5-3 Filing locations for permits to conduct exploration for mineral resources.

Each application for a permit to conduct geological or geophysical exploration for mineral resources in the OCS shall be filed, in duplicate, at the following locations:

(a) For the OCS off the Atlantic Coast—the Area Oil and Gas Supervisor for Resource Evaluation, Atlantic Area, Minerals Management Service, 1725 K Street NW, Suite 204, Washington, D.C. 20006.

(b) For the OCS in the Gulf of Mexico—the Area Oil and Gas Supervisor for Resource Evaluation, Minerals Management Service, Gulf of Mexico Area, P.O. Box 7944, Metairie, Louisiana 70010.

(c) For the OCS off the coast of the States of California, Oregon, or Washington—the Area Oil Gas Supervisor, Minerals Management Service, Pacific Area, Room 160, 1340 West Sixth Street, Los Angeles, California 90017.

(d) For the OCS off the State of Alaska—the Area Oil and Gas Supervisor, Minerals Management Service, Alaska Area, P.O. Box 259, Anchorage, Alaska 99510.

### § 251.5-4 Filing locations for notices or permits to conduct scientific research.

Each notice or application for a permit to conduct geological or geophysical scientific research on the OCS shall be filed, in duplicate, at the locations indicated in paragraph 251.5-3 of this section.

### § 251.6 Test drilling activities.

### § 251.6-1 Permit or notice requirements for shallow test drilling.

The Director, prior to the commencement of shallow test drilling for exploration for mineral resources or for scientific research, may require for permits or recommend for notices the gathering and submission of geophysical information and data sufficient to determine shallow structural detail across and in the vicinity of the proposed test. Other information and data may include, but is not limited to, seismic, bathymetric, side-scan sonar, and magnetometer systems, across and in the vicinity of the proposed test. When required, §§ 251.6-2(c)(1) and (e) and 251.6-3 will apply to permits issued and notices filed for shallow test drilling.

### § 251.6-2 Permit requirements for a deep stratigraphic test.

(a) No deep stratigraphic test drilling activities shall be initiated or conducted until a Drilling Plan has been submitted by the applicant and approved by the Director. The Drilling Plan shall include:

(1) The proposed type and sequence of drilling activities to be undertaken together with a timetable for their performance from commencement to completion;

(2) A description of the drilling rig proposed for use, unless a description has been previously submitted to the Director, indicating the important features thereof, with special attention to safety features and pollution prevention and control features, including oil spill containment and cleanup plans and onshore disposal procedures;

(3) The location of each deep stratigraphic test to be conducted, including the surface and projected bottomhole location of the borehole;

(4) The types of geophysical instrumentation to be used;

(5) Geophysical information and data sufficient to evaluate seafloor characteristics, shallow geologic hazards, and structural detail across and in the vicinity of the proposed test to the total depth of the proposed test well. Data and information from side-scan sonar and magnetometer surveys shall be submitted as required, at the option of the Director; and

(6) Such other relevant information and data as the Director may require.

(b) At the same time the applicant submits a Drilling Plan to the Director, an Environmental Report shall be submitted. The report shall be in summary form and should include information available at the time the related Drilling Plan is submitted. Information and data which are site-specific or which are developed subsequent to the most recent environmental impact statement or other environmental impact statements and analyses in the immediate area, shall be specifically considered. In order to eliminate the repetition of information and data discussed in the related plan, a broader presale environmental impact statement, other Environmental Reports, environmental analyses, or impact statements prepared for the geographic area, the applicant shall summarize the information, data, and issues in such other documents and concentrate on the issues specific to the site(s) of drilling activity. Discussions contained in the other documents shall be referenced when incorporation will cause a decrease in bulk without impeding review of the issues. The material referred to shall be cited and described briefly in the Environmental Report and include a statement of where the material is reasonably available for inspection. Any material based on proprietary data which is not itself available for inspection shall not be referenced. The Environmental Report shall include the following:

(1)(i) A list and description of new or unusual technologies that are to be used; (ii) the location of travel routes for supplies and personnel; (iii) the kinds and approximate quantities of energy to be used; (iv) the environmental monitoring systems that are to be used; and (v) suitable maps and diagrams showing details of the proposed project layout.

(2) A narrative description of the existing environment. This section shall include the following information on the area: (i) Geology; (ii) physical oceanography; (iii) other uses of the area; (iv) flora and fauna; (v) existing environmental monitoring systems; and (vi) other unusual or unique characteristics which may affect or be affected by the drilling activities.

(3) A narrative description of the probable impacts of the proposed action on the environment and the measures proposed for mitigating these impacts.

(4) A narrative description of any unavoidable or irreversible adverse effects on the environment that could be expected to occur as a result of the proposed action.

(5) Such other relevant information and data as the Director may require.

(c)(1) When required under a coastal zone management program approved under the Coastal Zone Management Act, the activities proposed by an applicant for a permit to conduct geological or geophysical exploration for minerals or for geological or geophysical scientific research must receive State concurrence in its coastal zone consistency certification prior to the Director's approval of any of the activities covered under the permit.

(2) The applicant shall submit a sufficient number of copies of the Drilling Plan and Environmental Report to permit the Director to transmit copies of each to the Governor of each affected State and the coastal zone management agency of each affected State that has a coastal zone management program approved under the Coastal Zone Management Act. The Director shall also make the Drilling Plan and accompanying Environmental Report available to appropriate Federal agencies and the public, in accordance with established Departmental practices and procedures.

(d) Any revisions to an approved Drilling Plan must be approved by the Director.

(e) A permittee authorized to drill a deep stratigraphic test shall, if requested by the Director, conduct studies to determine whether any cultural resources exist in the area that may be affected by such drilling, and shall report the findings of those studies to the Director. A permittee authorized to perform shallow test drilling may be required to conduct similar studies if required by the Director. The study shall include a full description of any cultural resources detected. The permittee shall take no action that will result in the disturbance of cultural resources without the prior approval of the Director and, if any cultural resource is discovered after submission of the study (i.e., during site preparation or drilling), the permittee shall immediately report the discovery to the Director and make every reasonable effort to protect the cultural resource from damage until the Director has given directions as to its preservation.

(f) All OCS regulations relating to drilling operations in Part 250 of this title and all OCS Orders relating to the drilling of wells apply, as appropriate, to drilling activities authorized under this part.

(g) At the completion of the test activities, the borehole of all deep stratigraphic tests shall be permanently plugged and abandoned by the permittee prior to moving the rig off location in accordance with the requirements of the regulations in Part 250 of this chapter and applicable orders. If the tract on which deep stratigraphic test drilling has been conducted is later leased for exploration and development, the lessee will not be held responsible for the test hole, provided the lessee has not reentered or otherwise disturbed the borehole.

[45 FR 6344, Jan. 25, 1980, as amended at 48 FR 54008, Nov. 30, 1983; 48 FR 55457, Dec. 13, 1983]

### § 251.6-3 Group participation in test drilling activities.

(a) In order to minimize duplicative geological exploration activities involving the penetration of the seabed of the OCS, a person proposing to drill a deep stratigraghic test shall afford all interested persons, through a signed agreement, an opportunity to participate in the drilling on a cost-sharing basis. The provisions of the agreement for sharing the cost of a deep stratigraphic test may include a penalty for late participants of not more than 100 percent of the cost to each original participant in addition to the original share cost. The participants shall assess and distribute penalties in accordance with the terms of the agreement. If the Director releases a public notice announcing a significant hydrocarbon occurrence, the penalty for subsequent late participants may be raised to not more than 300 percent of the cost of each original participant in addition to the original share cost.

(b) An applicant proposing to conduct shallow test drilling activities shall, when ordered by the Director or when provided in the permit, afford all interested persons an opportunity to participate in the test activity on a cost-sharing basis with a penalty for late participation of not more than 50 percent of the cost to each original participant.

(c) To allow for group participation in shallow or deep test drilling activities, the applicant shall:

(1) Publish a summary statement describing the proposed activity in a manner approved or prescribed by the Director;

(2) Forward a copy of the published statement to the Director;

(3) Allow at least 30 days from the date of publishing the summary statement for other persons to join as original participants;

(4) Compute the estimated cost to an original participant by dividing the estimated total cost of the program by the number of original participants; and

(5) Furnish the Director with a complete list of all participants under the permit prior to commencing operations, or at the end of the advertising period if operations begin prior to its close. Also, the names of all late participants shall be forwarded to the Director.

(d) If the applicant proposes changes to the original application and the Director determines that such changes are significant, the Director shall require a republication of the changes and an additional 30 days for other persons to join as original participants.

### § 251.6-4 Bonds.

Before a permit authorizing the drilling of a deep stratigraphic test will be issued, the applicant shall furnish to the Minerals Management Service a corporate surety bond of not less than $50,000 conditioned on compliance with the terms of the permit, unless the applicant maintains with or furnishes to the Minerals Management Service a bond in the sum of $300,000 conditioned on compliance with the terms of the permit issued to him for the area of the OCS where the applicant proposes to conduct the drilling of a deep stratigraphic test. The Director may require the submission of a bond before authorizing the initiation of shallow test drilling. Any bond furnished or maintained by a person under this section shall be on a form approved or prescribed by the Director, Minerals Management Service.

[45 FR 6344, Jan. 25, 1980, as amended at 48 FR 54008, Nov. 30, 1983]

### § 251.6-5 Duration of exploration activities.

If a deep stratigraphic test well is drilled within 50 geographic miles of any tract within the area identified for consideration for leasing as listed on the currently approved OCS Leasing Schedule, all drilling activities must be completed, and the information and data submitted to the Director at least 60 days prior to the first day of the month in which the lease sale is scheduled to be held. However, the Director may extend the expiration date of a permit if it is determined that such an extension is in the national interest.

[47 FR 15782, Apr. 13, 1982]

### § 251.7 Inspection and reporting of progress and results of activities conducted under permits.

### § 251.7-1 Inspection and observation of exploration activities.

(a) A permittee, upon request by the Director, shall furnish food, quarters, and transportation for Federal representatives. Upon request, the permittee will be reimbursed by the United States for the actual costs incurred as a result of providing food, quarters, and transportation for a Federal representative's stay of more than 10 hours. The Federal representative shall observe or inspect operations conducted pursuant to the permit and determine whether operations are having any adverse effects upon the environment, aquatic life, cultural resources, or other uses of the area.

(b) The Federal representatives shall be appointed or approved by the Director.

### § 251.7-2 Progress report on activities conducted under a permit.

Each permittee shall submit status reports on a monthly basis in a manner approved or prescribed by the Director. This shall include a daily log of operations.

[48 FR 37968, Aug. 22, 1983; 48 FR 40380, Sept. 7, 1983]

### § 251.7-3 Final report on activities conducted under a permit.

Each permittee shall submit to the Director a final report of exploration or scientific research activities under the permit within 30 days after the completion of operations. The final report shall contain the following:

(a) A description of the work performed.

(b) Charts, maps, or plats depicting the areas and blocks in which any exploration or scientific research activities were conducted, specifically identifying the lines of geophysical traverses or the locations where geological exploration or scientific research activities were conducted, including a reference sufficient to identify the data produced during each activity.

(c) The dates on which the actual exploration or scientific research activities were performed.

(d) A narrative summary of any: (1) Hydrocarbon occurrences or environmental hazards, and (2) adverse effects of the exploration or scientific research activities on the environment, aquatic life, cultural resources, or other uses of the area in which the activities were conducted.

(e) Such other descriptions of the activities conducted as may be specified by the Director.

### § 251.8 Suspension and cancellation of authority to conduct activities under permit.

(a) The Director may suspend or temporarily prohibit the permittee's authority to conduct exploration or scientific research activities under a permit by notifying the permittee either orally or in writing when the Director determines that there is a threat of serious, irreparable, or immediate harm or damage to life (including fish and other aquatic life), to property, to any mineral deposits (in areas leased or not leased), to the national security or defense, or to the marine, coastal, or human environment. Such suspensions shall be effec-

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tive immediately upon receipt of the notice. Suspensions issued orally shall be followed by a written notice confirming the action, and all written notices will be sent by certified mail. A suspension shall remain in effect until the basis for the suspension has been corrected to the satisfaction of the Director.

(b) The Director may suspend or temporarily prohibit the permittee's authority to conduct exploration or scientific research under a permit either orally or in writing when the Director determines the permittee fails to comply with a provision of the Act or of any applicable law, the provisions of the permit, provisions of these and other applicable regulations, OCS Orders, or any other written orders or field rules including orders for the filing of reports and well records or logs within the time specified. Such suspensions shall be effective immediately upon receipt of the notice. Suspensions issued orally shall be followed by a written notice confirming the action and all written notices shall be sent by certified mail. A suspension shall remain in effect until the basis for the suspension has been corrected to the satisfaction of the Director.

(c)(1) The Director may cancel, or a permittee may relinquish, a permit to conduct exploration or scientific research activities at any time by sending a notice of cancellation or a notice of relinquishment. Such notices shall state the reason for the cancellation or relinquishment and shall be sent by certified mail to the other party at least 30 days in advance of the date the cancellation or relinquishment will be effective.

(2) Cancellation of a permit to conduct exploration or scientific research activities shall not relieve the permittee of the obligation to abandon any drill sites in accordance with the requirements of § 251.6-2(g) of this part and to comply with all other obligations specified in this part or in the permit.

### § 251.9 Penalties.

All persons conducting geological or geophysical exploration activities for mineral resources or scientific research shall be subject to the penalty provisions of section 24 of the Act (43 U.S.C. 1350), the procedures contained in § 250.80 of this chapter for noncompliance with any provision of the Act, or any provision of the permit, or for any violation of the provisions of any regulation or order issued under the Act. The penalties prescribed in this section shall be in addition to any other penalty afforded by any other law or regulation.

### § 251.10 Appeals.

Orders or decisions issued under the regulations in this part may be appealed as provided in Part 290 of this chapter.

### § 251.11 Inspection, selection, and submission of geological information and data.

(a) Each holder of a permit for geological exploration activities for mineral resources or scientific research shall notify the Director in writing within 30 days of the acquisition, initial analysis, and initial interpretation of any geological information and data collected under the permit. Within 30 days following the receipt of the Director's request for notice of any subsequent analysis and interpretation of that geological information or data, the permittee shall submit notice of the availability of that information in writing.

(b) Each submission of geological data, analyzed geological information, and interpreted geological information shall contain, unless otherwise specified by the Director, the following:

(1) An accurate and complete record of all geological (including geochemical) data, analyzed geological information, and interpreted geological information resulting from each operation;

(2) Paleontological reports identifying microscopic fossils by depth, unless washed samples are maintained by the permittee for paleontological determination and are made available upon request for inspection by the Minerals Management Service;

(3) Copies of well logs or charts;

(4) Results and data obtained from formation fluid tests;

(5) Analyses of core or bottom samples or a representative cut or split of the core or bottom sample;

(6) Detailed descriptions of any hydrocarbons or hazardous conditions encountered during operations, including near losses of well-control, abnormal geopressures, and losses of circulation; and

(7) Such other geological data, analyzed geological information, and interpreted geological information as may be specified by the Director.

(c) In the event that geological data, analyzed geological information, or interpreted geological information is transferred from the permittee to a third party, or from a third party to another third party, the transferor shall notify the Director and shall require the receiving party, in writing, to abide by the obligations of the permittee as specified in this section as a condition precedent to the transfer of information or data.

[45 FR 6344, Jan. 25, 1980, as amended at 48 FR 46026, Oct. 11, 1983]

### § 251.12 Inspection, selection, and submission of geophysical information and data.

(a) Each holder of a permit for geophysical exploration activities for mineral resources or scientific research shall notify the Director in writing within 30 days of the acquisition, initial processing, and initial interpretation of any geophysical information and data collected under the permit. Within 30 days following the receipt of the Director's request for notice of any reprocessing or subsequent interpretation of that geophysical information or data, the permittee shall submit notice of the availability of that information in writing.

(b) The Director shall have the right to inspect geophysical data, processed geophysical information, reprocessed geophysical information, or interpreted geophysical information prior to final selection. This inspection shall be performed on the permittee's premises unless the Director requests that the permittee deliver the information or data to the Director for inspection. Such delivery shall be within 30 days following the receipt of the Director's request unless the Director authorizes a later delivery date. At any time prior to final selection, the Director may return any or all geophysical information or data following either its inspection and detailed assessment of its quality, or the establishment of a price to the Government for the processing or reprocessing of the geophysical information or data. If the Director decides to keep all or a portion of the geophysical information and data, the Director shall notify the permittee, in writing, of this decision. If the inspection is done on the permittee's premises, the permittee shall submit the geophysical information or data selected within 30 days following receipt of the Director's request, unless the Director authorizes a longer period of time for delivery. The Director shall have the right to arrange, by contract or otherwise, for the reproduction, without the consent of the permittee, of geophysical data, processed geophysical information, reprocessed geophysical information, and interpreted geophysical information.

(c) In the event that geophysical data, processed geophysical information, reprocessed geophysical information, or interpreted geophysical information is transferred from the permittee to a third party, or from a third party to another third party, the transferor shall notify the Director and shall require the receiving third party, in writing, to abide by the obligations of the permittee as specified in this section as a condition precedent to the transfer of information or data.

(d) Each submission of geophysical data, processed geophysical information, reprocessed geophysical information, and interpreted geophysical information, shall contain, unless otherwise specified by the Director, the following:

(1) An accurate and complete record of each geophysical survey conducted under the permit, including digital navigational data and final location maps of all survey stations;

(2) All seismic data developed under a permit presented in a format and of a quality suitable for processing;

(3) Processed geophysical information derived from seismic data with extraneous signals and interference removed, presented in a format and of a

quality suitable for interpretive evaluation, reflecting state-of-the-art processing techniques; and

(4) Other geophysical data, processed geophysical information, reprocessed geophysical information, and interpreted geophysical information obtained from, but not limited to, shallow and deep subbottom profiles, bathymetry, sidescan sonar, gravity and magnetic surveys, and special studies such as refraction and velocity surveys.

[45 FR 6344, Jan. 25, 1980, as amended at 48 FR 46026, Oct. 11, 1983]

### § 251.13 Reimbursement to permittees.

(a) After the delivery to the Director of geological data, analyzed geological information, interpreted geological information, geophysical data, processed geophysical information, reprocessed geophysical information, and interpreted geophysical information selected by the Director in accordance with §§ 251.11 or 251.12, and upon receipt of a request for reimbursement and a determination by the Director that the requested reimbursement is proper, the permittee or third party shall be reimbursed for the reasonable costs of reproducing the selected information and data at the permittee's or third party's lowest rate or at the lowest commercial rate established in the area, whichever is less.

(b) After the delivery to the Director of processed or reprocessed geophysical information selected and retained by the Director in accordance with § 251.12(b) and upon receipt of a request for reimbursement and a determination that the requested reimbursement is proper, the permittee or third party shall be reimbursed for the reasonable costs attributable to processing and reprocessing such information (as distinguished from the cost of data acquisition) if the processing or reprocessing was in the form and manner of processing other than that used in the normal conduct of business at the Director's request.

(c) Requests for reimbursement shall identify processing and reprocessing costs separate from acquisition costs.

(d) The permittee or third party shall not be reimbursed for the costs of analyzing geological information or interpreting geological or geophysical information.

[47 FR 25331, June 11, 1982, as amended at 51 FR 17176, May 9, 1986]

### § 251.14 Disclosure of information and data submitted under permits.

### § 251.14-1 Disclosure of information and data to the public.

(a) The Director shall make information and data available in accordance with the requirements and subject to the limitations of the Freedom of Information Act (5 U.S.C. 552) and the implementing regulations (43 CFR Part 2), the requirements of the Act, and the regulations contained in 30 CFR Part 250 (Oil and Gas and Sulphur Operations in the Outer Continental Shelf), this Part, and 30 CFR Part 252 (Outer Continental Shelf Oil and Gas Information Program).

(b) Except as specified in this section or in Parts 250 and 252 of this chapter, no information or data determined by the Director to be exempt from public disclosure under paragraph (a) of this section shall be provided to any affected State or be made available to the executive of any affected local government or to the public unless the permittee and all persons to whom such permittee has sold the information or data under promise of confidentiality agree to such an action.

(c) The Director shall disclose geological data, analyzed geological information, and interpreted geological information submitted under a permit as follows:

(1) The Director shall immediately issue a public announcement when any significant hydrocarbon occurrences are detected or environmental hazards are encountered on unleased lands during drilling operations. In the case of significant hydrocarbon occurrences, the Director will announce such occurrences in a form and manner that will further the national interest without unduly damaging the competitive position of those conducting the drilling. Other information and data pertaining to the permit will be released according to the schedule

provided in paragraph (c)(2) or (3) of this section.

(2) The Director shall make available to the public all geological data, analyzed geological information, and interpreted geological information, except geological data, analyzed geological information, and interpreted geological information obtained from the drilling of a deep stratigraphic test, 10 years after the date of issuance of the permit under which the information and data was obtained.

(3) The Director shall make available to the public all geological data and information obtained from drilling a deep stratigraphic test 10 years after the completion date of the test or 60 calendar days after the issuance of the first OCS oil and gas lease within 50 geographic miles (92.6 kilometers) of the site of the completed test, whichever is sooner. The Director shall make available to the public all geological information and data submitted in support of an application for a permit to drill a deep stratigraphic test well at the earlier of the following times: (i) 10 years after completion of the test; or (ii) 60 calendar days after the issuance of the first OCS oil and gas lease within 50 geographic miles (92.6 kilometers) of the site of the completed test.

(d) The Director shall disclose geophysical data, processed geophysical information, reprocessed geophysical information, and interpreted geophysical information submitted under a permit, and retained by the Director, as follows:

(1) The Director shall make available to the public geophysical data 10 years after the date of issuance of the permit under which the data is obtained.

(2) The Director shall make available to the public processed geophysical information, reprocessed geophysical information, and interpreted geophysical information 10 years after the date it is submitted to the Director.

(3) The Director shall make available to the public processed geophysical information, reprocessed geophysical information, and interpreted geophysical information submitted in support of an application for a permit to drill a deep stratigraphic test, or which the permittee is required to obtain in order to conduct the drilling of a deep stratigraphic test, at the earliest of the following times: (i) 10 years after completion of the test; or (ii) 60 calendar days after the issuance of the first OCS oil and gas lease within 50 geographic miles (92.6 kilometers) of the site of the completed test.

### § 251.14-2 Disclosure to independent contractors.

The Director reserves the right to disclose any information or data acquired from a permittee to an independent contractor or agent for the purpose of reproducing, processing, reprocessing, or interpreting such information or data. When practicable, the Director shall notify the permittee who provided the information or data of intent to disclose the information or data to an independent contractor or agent. The Director's notice of intent will afford the permittee a period of not less than 5 working days within which to comment on the intended action. When the Director so notifies a permittee of the intent to disclose information or data to an independent contractor or agent, all other owners of such information or data shall be deemed to have been notified of the Director's intent. Prior to any such disclosure, the contractor or agent shall be required to execute a written commitment not to transfer or to otherwise disclose any information or data to anyone without the express consent of the Director. The contractor or agent shall be liable for any unauthorized use by or disclosure of information or data to third parties.

### § 251.14-3 Sharing of information with affected States.

(a) At the time of soliciting nominations for the leasing of lands within 3 geographic miles of the seaward boundary of any coastal State, the Director, pursuant to the provisions of § 252.7(a)(4) and (b) of this chapter and sections 8(g) and 26(e) of the Act, shall provide the Governor of the State the following information that has been acquired by the Director on such lands proposed to be offered for leasing:

(1) All information on the geographical, geological, and ecological characteristics of the areas and regions proposed to be offered for leasing;

(2) An estimate of the oil and gas reserves in the areas proposed for leasing; and

(3) An identification of any field, geological structure, or trap located within 3 miles of the seaward boundary of the State.

(b) After the time of receipt of nominations for any area of the OCS within 3 geographic miles of the seaward boundary of any coastal State and tentative tract selection in accordance with the provisions of 43 CFR Parts 3313 and 3314, the Director, in consultation with the Governor of the State, shall determine whether any tracts being given further consideration for leasing may contain one or more oil or gas reservoirs underlying both the OCS and lands subject to the jurisdiction of the State.

(c) At any time prior to a sale, information acquired by the Director that pertains to the identification of oil or gas pools or fields underlying both the Outer Continental Shelf and lands subject to the jurisdiction of any coastal State on tracts selected for leasing within 3 geographic miles of the seaward boundary of any such State will be shared, upon request and pursuant to the provisions of § 252.7(a)(4) and (b) of this chapter and sections 8(g) and 26 of the Act, with the Governor of such State.

(d) Knowledge obtained by a State official who receives information under paragraphs (a) and (b) of this section shall be subject to the requirements and limitations of the Freedom of Information Act (5 U.S.C. 552) and the implementing regulations (43 CFR Part 2), the Act, the regulations contained in 30 CFR Part 250 (Oil and Gas and Sulphur Operations in the Outer Continental Shelf), the regulations in this Part 251 (Geological and Geophysical Explorations of the Outer Continental Shelf), and the regulations contained in 30 CFR Part 252 (Outer Continental Shelf Oil and Gas Information Program).

### § 251.14-4 Disclosure of information and data relating to specific contractual commitments.

All information and data already received by the Director and covered by a specific contractual commitment concerning its release shall be handled in a way consistent with the contractual commitment. In the event of any conflict between this provision and a provision of any other regulation in this Part 251, or of any regulation in Part 250 of this chapter, this provision shall govern.

## PART 252—OUTER CONTINENTAL SHELF (OCS) OIL AND GAS INFORMATION PROGRAM

Sec.
252.1 Purpose.
252.2 Definitions.
252.3 Oil and gas data and information to be provided for use in the OCS Oil and Gas Information Program.
252.4 Summary Report to affected States.
252.5 Information to be made available to affected States.
252.6 Freedom of Information Act requirements.
252.7 Privileged and proprietary data and information to be made available to affected States.

AUTHORITY: OCS Lands Act, 43 U.S.C. 1331 et seq., as amended, 92 Stat. 629; Freedom of Information Act, 5 U.S.C. 552; § 252.3 also issued under Pub. L. 99-190 making continuing appropriations for Fiscal Year 1986, and for other purposes.

SOURCE: 44 FR 46408, Aug. 7, 1979, unless otherwise noted.

EDITORIAL NOTE. Nomenclature changes to this part appear at 47 FR 28369, June 30, 1982.

### § 252.1 Purpose.

The purpose of this part is to implement the provisions of section 26 of the Act (43 U.S.C. 1352). This part supplements the procedures and requirements contained in Parts 250 and 251 of this chapter and provides procedures and requirements for the submission of oil and gas data and information resulting from exploration, development, and production operations on the Outer Continental Shelf (OCS) to the Director, Minerals Management Service. In addition, this part establishes procedures for the Director to make available certain information to the Governors of affected States and, upon request, to the executives of affected local governments in accordance with the provisions of the Freedom of Information Act and the Act.

### § 252.2 Definitions.

When used in the regulations in this part, the following terms shall have the meanings given below:

(a) "Act" refers to the Outer Continental Shelf Lands Act, as amended (43 U.S.C. 1331 *et seq.*).

(b) "Affected local government" means the principal governing body of a locality which is in an affected State and is identified by the Governor of that State as a locality which will be significantly affected by oil and gas activities on the OCS.

(c) "Affected State" means, with respect to any program, plan, lease sale, or other activity, proposed, conducted, or approved pursuant to the provisions of the Act, any State:

(1) The laws of which are declared, pursuant to section 4(a)(2)(A) of the Act, to be the law of the United States for the portion of the OCS on which such activity is, or is proposed to be, conducted;

(2) Which is, or is proposed to be, directly connected by transportation facilities to any artificial island or installations and other devices permanently, or temporarily attached to the seabed;

(3) Which is receiving, or in accordance with the proposed activity will receive, oil for processing, refining, or transshipment which was extracted from the OCS and transported directly to such State by means of vessels or by a combination of means including vessels;

(4) Which is designated by the Director as a State in which there is a substantial probability of significant impact on or damage to the coastal, marine, or human environment, or a State in which there will be significant changes in the social, governmental, or economic infrastructure, resulting from the exploration, development, and production of oil and gas anywhere on the OCS; or

(5) In which the Director finds that because of such activity there is, or will be, a significant risk of serious damage, due to factors such as prevailing winds and currents, to the marine or coastal environment in the event of any oilspill, blowout, or release of oil or gas from vessels, pipelines, or other transshipment facilities.

(d) "Analyzed geological information" means data collected under a permit or a lease which have been analyzed. Analysis may include, but is not limited to, identification of lithologic and fossil content, core analyses, laboratory analyses of physical and chemical properties, logs or charts of electrical, radioactive, sonic, and other well logs, and descriptions of hydrocarbon shows or hazardous conditions.

(e) "Area adjacent to a State" means all of that portion of the OCS included within a planning area if such planning area is bordered by that State. The portion of the OCS in the Navarin Basin Planning Area is deemed to be adjacent to the State of Alaska. The States of New York and Rhode Island are deemed to be adjacent to both the Mid-Atlantic Planning Area and the North Atlantic Planning Area.

(f) "Data" means facts and statistics or samples which have not been analyzed or processed.

(g) "Development" means those activities which take place following discovery of oil or natural gas in paying quantities, including geophysical activity, drilling, platform construction, and operation of all onshore support facilities, and which are for the purpose of ultimately producing the oil and gas discovered.

(h) "Director" means the Director of the Minerals Management Service of the U.S. Department of the Interior or a designee of the Director.

(i) "Exploration" means the process of searching for oil and natural gas, including: (1) Geophysical surveys where magnetic, gravity, seismic, or other systems are used to detect or imply the presence of such oil or natural gas, and (2) any drilling, whether on or off known geological structures, including the drilling of a well in which a discovery of oil or natural gas in paying quantities is made and the drilling of any additional delineation well after such discovery which is needed to delineate any reservoir and to enable the lessee to determine whether to proceed with development and production.

(j) "Governor" means the Governor of a State, or the person or entity designated by, or pursuant to, State law to exercise the powers granted to a Governor pursuant to the Act.

(k) "Information," when used without a qualifying adjective, includes analyzed geological information, processed geophysical information, interpreted geological information, and interpreted geophysical information.

(l) "Interpreted geological information" means knowledge, often in the form of schematic cross sections and maps, developed by determining the geological significance of data and analyzed geological information.

(m) "Interpreted geophysical information" means knowledge, often in the form of schematic cross sections and maps, developed by determining the geological significance of geophysical data and processed geophysical information.

(n) "Lease" means any form of authorization which is issued under section 8 or maintained under section 6 of the Act and which authorizes exploration for, and development and production of, oil or natural gas, or the land covered by such authorization, whichever is required by the context.

(o) "Lessee" means the party authorized by a lease, or an approved assignment thereof, to explore for and develop and produce the leased deposits in accordance with the regulations in Part 250 of this chapter, including all parties holding such authority by or through the lessee.

(p) "Outer Continental Shelf (OCS)" means all submerged lands which lie seaward and outside of the area of lands beneath navigable waters as defined in the Submerged Lands Act (67 Stat. 29) and of which the subsoil and seabed appertain to the United States and are subject to its jurisdiction and control.

(q) "Permittee" means the party authorized by a permit issued pursuant to Part 251 of this chapter to conduct activities on the OCS.

(r) "Processed geophysical information" means data collected under a permit or a lease which have been processed. Processing involves changing the form of data so as to facilitate interpretation. Processsing operations may include, but are not limited to, applying corrections for known perturbing causes, rearranging or filtering data, and combining or transforming data elements.

(s) "Production" means those activities which take place after the successful completion of any means for the removal of oil or natural gas, including such removal, field operations, transfer of oil or natural gas to shore, operation monitoring, maintenance, and workover drilling.

(t) "Secretary" means the Secretary of the Interior or a designee of the Secretary.

[44 FR 46408, Aug. 7, 1979, as amended at 49 FR 10670, Mar. 22, 1984; 51 FR 10382, Mar. 26, 1986]

### § 252.3 Oil and gas data and information to be provided for use in the OCS Oil and Gas Information Program.

(a) Any permittee or lessee engaging in the activities of exploration for, or development and production of, oil and gas on the OCS shall provide the Director access to all data and information obtained or developed as a result of such activities, including geological data, geophysical data, analyzed geological information, processed and reprocessed geophysical information, interpreted geophysical information, and interpreted geological information. Copies of these data and information and any interpretation of these data and information shall be provided to the Director upon request. No permittee or lessee submitting an interpretation of data or information, where such interpretation has been submitted in good faith, shall be held responsible for any consequence of the use of or reliance upon such interpretation.

(b)(1) Whenever a lessee or permittee provides any data or information, at the request of the Director and specifically for use in the OCS Oil and Gas Information Program in a form and manner of processing which is utilized by the lessee or permittee in the normal conduct of business, the Director shall pay the reasonable cost of reproducing the data and information if the lessee or permittee requests reimbursement. The cost shall be computed and paid in accordance with the applicable provisions of paragraph (e)(1) of this section.

(2) Whenever a lessee or permittee provides any data or information, at the request of the Director and specifically for use in the OCS Oil and Gas Information Program, in a form and manner of processing not normally utilized by the lessee or permittee in the normal conduct of business, the Director shall pay the lessee or permittee, if the lessee or permittee requests reimbursement, the reasonable cost of processing and reproducing the requested data and information. The cost is to be computed and paid in accordance with the applicable provisions of paragraph (e)(2) of this section.

(c) Data or information requested by the Director shall be provided as soon as practicable, but not later than 30 days following receipt of the Director's request, unless, for good reason, the Director authorizes a longer time period for the submission of the requested data or information.

(d) The Director reserves the right to disclose any data or information acquired from a lessee or permittee to an independent contractor or agent for the purpose of reproducing, processing, reprocessing, or interpreting such data or information. When practicable, the Director shall notify the lessee(s) or permittee(s) who provided the data or information of the intent to disclose the data or information to an independent contractor or agent. The Director's notice of intent will afford the permittee(s) or lessee(s) a period of not less than 5 working days within which to comment on the intended action. When the Director so notifies a lessee or permittee of the intent to disclose data or information to an independent contractor or agent, all other owners of such data or information shall be deemed to have been notified of the Director's intent. Prior to any such disclosure, the contractor or agent shall be required to execute a written commitment not to disclose any data or information to anyone without the express consent of the Director, and not to make any disclosure or use of the data or information other than that provided in the contract. Contracts between the Minerals Management Service and independent contractors shall be available to the lessee(s) or permittee(s) for inspection. In the event of any unauthorized use or disclosure of data or information by the contractor or agent, or by an employee thereof, the responsible contractor or agent or employee thereof shall be liable for penalties pursuant to section 24 of the Act.

(e)(1) After delivery of data or information in accordance with paragraph (b)(1) of this section and upon receipt of a request for reimbursement and a determination by the Director that the requested reimbursement is proper, the lessee or permittee shall be reimbursed for the cost of reproducing the data or information at the lessee's or permittee's lowest rate or at the lowest commercial rate established in the area, whichever is less. Requests for reimbursement must be made within 60 days of the delivery date of the data or information requested under paragraph (b)(1) of this section.

(2) After delivery of data or information in accordance with paragraph (b)(3) of this section, and upon receipt of a request for reimbursement and a determination by the Director that the requested reimbursement is proper, the lessee or permittee shall be reimbursed for the cost of processing or reprocessing and of reproducing the requested data or information. Requests for reimbursement must be made within 60 days of the delivery date of the data or information and shall be for only the costs attributable to processing or reprocessing and reproducing, as distinguished from the costs of data acquisition.

(3) Requests for reimbursement are to contain a breakdown of costs in sufficient detail to allow separation of reproduction, processing, and reprocessing costs from acquisition and other costs.

(f) Each Federal Department or Agency shall provide the Director with any data which it has obtained pursuant to section 11 of the Act and any other information which may be necessary or useful to assist the Director in carrying out the provisions of the Act.

[44 FR 46408, Aug. 7, 1979, as amended at 51 FR 17176, May 9, 1986]

### § 252.4 Summary Report to affected States.

(a) The Director, as soon as practicable after analysis, interpretation, and compilation of oil and gas data and information developed by the Minerals Management Service or furnished by lessees, permittees, or other government agencies, shall make available to affected States and, upon request, to the executive of any affected local government, a Summary Report of data and information designed to assist them in planning for the onshore impacts of potential OCS oil and gas development and production. The Director shall consult with affected States and other interested parties to define the nature, scope, content, and timing of the Summary Report. The Director may consult with affected States and other interested parties regarding subsequent revisions in the definition of the nature, scope, content and timing of the Summary Report. The Summary Report shall not contain data or information which the Director determines is exempt from disclosure in accordance with this part. The Summary Report shall not contain data or information the release of which the Director determines would unduly damage the competitive position of the lessee or permittee who provided the data or information which the Director has processed, analyzed, or interpreted during the development of the Summary Report. The Summary Report shall include:

(1) Estimates of oil and gas reserves; estimates of the oil and gas resources that may be found within areas which the Secretary has leased or plans to offer for lease; and when available, projected rates and volumes of oil and gas to be produced from leased areas;

(2) Magnitude of the approximate projections and timing of development, if and when oil or gas, or both, is discovered;

(3) Methods of transportation to be used, including vessels and pipelines and approximate location of routes to be followed; and

(4) General location and nature of near-shore and onshore facilities expected to be utilized.

(b) When the Director determines that significant changes have occurred in the information contained in a Summary Report, the Director shall prepare and make available the new or revised information to each affected State, and, upon request, to the executive of any affected local government.

### § 252.5 Information to be made available to affected States.

(a) The Director in conjunction with the Director of the Bureau of Land Management shall prepare an index of OCS information (see 43 CFR 3300.2). The index shall list all relevant actual or proposed programs, plans, reports, environmental impact statements, nominations information, environmental study reports, lease sale information, and any similar type of relevant information, including modifications, comments, and revisions prepared or directly obtained by the Director under the Act. The index shall be sent to affected States and, upon request, to any affected local government. The public shall be informed of the availability of the index.

(b) Upon request, the Director shall transmit to affected States, affected local governments, and the public a copy of any information listed in the index which is subject to the control of the Minerals Management Service, in accordance with the requirements and subject to the limitations of the Freedom of Information Act (5 U.S.C. 552) and implementing regulations. The Director shall not transmit or make available any information which he determines is exempt from disclosure in accordance with this part.

### § 252.6 Freedom of Information Act requirements.

(a) The Director shall make data and information available in accordance with the requirements and subject to the limitations of the Freedom of Information Act (5 U.S.C. 552), the regulations contained in 43 CFR Part 2 (Records and Testimony), the requirements of the Act, and the regulations contained in 30 CFR Part 250 (Oil and Gas and Sulphur Operations in the Outer Continental Shelf) and 30 CFR Part 251 (Geological and Geophysical Explorations of the Outer Continental Shelf).

(b) Except as provided in § 252.7 or in Parts 250 and 251 of this chapter, no data or information determined by the director to be exempt from public disclosure under paragraph (a) of this section shall be provided to any affected State or be made available to the executive of any affected local government or to the public unless the lessee, or the permittee and all persons to whom such permittee has sold such data or information under promise of confidentiality, agree to such action.

### § 252.7 Privileged and proprietary data and information to be made available to affected States.

(a)(1) The Governor of any affected State may designate an appropriate State official to inspect, at a regional location which the Director shall designate, any privileged or proprietary data or information received by the Director regarding any activity in an area adjacent to such State, except that no such inspection shall take place prior to the sale of a lease covering the area in which such activity was conducted.

(2)(i) Except as provided for in 30 CFR 250.4 and 251.14, no privileged or proprietary data or information will be transmitted to any affected State unless the lessee who provided the privileged or proprietary data or information agrees in writing to the transmittal of the data or information.

(ii) Except as provided for in 30 CFR 250.4 and 251.14, no privileged or proprietary data or information will be transmitted to any affected State unless the permittee and all persons to whom the permittee has sold the data or information under promise of confidentiality agree in writing to the transmittal of the data or information.

(3) Knowledge obtained by a State official who inspects data or information under paragraph (a)(1) or who receives data or information under paragraph (a)(2) of this section shall be subject to the requirements and limitations of the Freedom of Information Act (5 U.S.C. 552), the regulations contained in 43 CFR Part 2 (Records and Testimony), the Act (92 Stat. 629), the regulations contained in 30 CFR Part 250 (Oil and Gas and Sulphur Operations in the Outer Continental Shelf), the regulations contained in 30 CFR Part 251 (Geological and Geophysical Explorations of the Outer Continental Shelf), and the regulations contained in this Part 252 (Outer Continental Shelf Oil and Gas Information Program).

(4) Prior to the transmittal of any privileged or proprietary data or information to any State, or the grant of access to a State official to such data or information, the Secretary shall enter into a written agreement with the Governor of the State in accordance with section 26(e) of the Act (43 U.S.C. 1352). In that agreement the State shall agree, as a condition precedent to receiving or being granted access to such data or information to: (i) Protect and maintain the confidentiality of privileged or proprietary data and information in accordance with the laws and regulations listed in paragraph (a)(3) of this section; (ii) waive the defenses as set forth in paragraph (b)(2) of this section; and (iii) hold the United States harmless from any violations of the agreement to protect the confidentiality of privileged or proprietary data or information by the State or its employees or contractors.

(b)(1) Whenever any employee of the Federal Government or of any State reveals in violation of the Act or of the provisions of the regulations implementing the Act, privileged or proprietary data or information obtained pursuant to the regulations in this chapter, the lessee or permittee who supplied such information to the Director or any other Federal official, and any person to whom such lessee or permittee has sold such data or information under the promise of confidentiality, may commence a civil action for damages in the appropriate district court of the United States against the Federal Government or such State, as the case may be. Any Federal or State employee who is found guilty of failure to comply with any of the requirements of this section shall be subject to the penalties described in section 24 of the Act (43 U.S.C. 1350).

(2) In any action commenced against the Federal Government or a State pursuant to paragraph (b)(1) of this section, the Federal Government or such State, as the case may be, may not raise as a defense any claim of sovereign immunity, or any claim that the employee who revealed the privileged or proprietary data or information which is the basis of such suit was acting outside the scope of the person's employment in revealing such data or information.

(c) If the Director finds that any State cannot or does not comply with the conditions described in the agreement entered into pursuant to paragraph (a)(4) of this section, the Director shall thereafter withhold transmittal and deny access for inspection of privileged or proprietary data or information to such State until the Director finds that such State can and will comply with those conditions.

## PART 256—OUTER CONTINENTAL SHELF MINERALS AND RIGHTS-OF-WAY MANAGEMENT, GENERAL

### Subpart A—Outer Continental Shelf Minerals and Rights-of-Way Management, General

Sec.
256.0 Authority for information collection.
256.1 Purpose.
256.2 Policy.
256.4 Authority.
256.5 Definitions.
256.7 Cross references.
256.8 Leasing maps and diagrams.
256.10 Information to States.
256.11 Helium.

### Subpart B—Oil and Gas Leasing Program

256.14 Definitions.
256.16 Receipt and consideration of nominations; public notice and participation.
256.17 Review by State and local governments and other persons.
256.19 Periodic consultation with interested parties.
256.20 Consideration of Coastal Zone Management program.

### Subpart C—Reports From Federal Agencies

256.22 General.

Sec.

### Subpart D—Call for Information and Nominations

256.23 Information on areas.
256.25 Areas near Coastal States.

### Subpart E—Area Identification and Tract Size

256.26 General.
256.28 Tract size.

### Subpart F—Lease Sales

256.29 Proposed Notice of Sale.
256.31 State comments.
256.32 Notice of sale.

### Subpart G—Issuance of Leases

256.35 Qualifications of lessees.
256.37 Lease term.
256.38 Joint bidding provisions.
256.40 Definitions.
256.41 Joint bidding requirements.
256.43 Chargeability for production.
256.44 Bids disqualified.
256.46 Submission of bids.
256.47 Award of leases.
256.49 Lease form.
256.50 Dating of leases.

### Subpart H—Rentals and Royalties—[Reserved]

### Subpart I—Bonding

256.58 Acceptable bonds.
256.59 Form of bond.
256.61 Additional bonds.

### Subpart J—Assignments, Transfers, and Extensions

256.62 Assignments of leases or interests therein.
256.64 Requirements for filing of transfers.
256.65 Attorney General review.
256.67 Separate filings for assignments.
256.68 Effect of assignment of a particular tract.
256.70 Extension of lease by drilling or well reworking operations.
256.71 Directional drilling.
256.73 Compensatory payments as production.
256.74 Effect of suspensions on lease term.

### Subpart K—Termination of Leases

256.76 Relinquishment of leases or parts of leases.
256.77 Cancellation of leases.

### Subpart L—Section 6 Leases

256.79 Effect of regulations on lease.
256.80 Leases of other minerals.

Sec.

Subpart M—Studies

256.82 Environmental studies.

Subpart N—Grants of Pipeline Rights-of-way on the Outer Continental Shelf

256.83 Purpose.
256.85 Policy.
256.88 Definitions.
256.89 Nature of grant.
256.91 Application procedures.
256.92 Applications.
256.94 Approval action.
256.95 Construction.
256.97 Assignment of right-of-way
256.98 Relinquishment of right-of-way.
256.100 Change of use or flow.
256.101 Bonding.

APPENDIX A—OIL AND GAS CASH BONUS BID

AUTHORITY: Secretarial Order 3071, Amendment No. 1, May 10, 1982, and the OCS Lands Act, 43 U.S.C. 1331 et seq., as amended, 92 Stat. 629.

Source: 44 FR 38276, June 29, 1979, unless otherwise noted. Redesignated at 47 FR 47006, Oct. 22, 1982.

EDITORIAL NOTE: Nomenclature changes to this part appear at 47 FR 47007, Oct. 22, 1982.

## Subpart A—Outer Continental Shelf Minerals and Rights-of-way Management, General

### § 256.0 Authority for information collection.

The information collection requirements contained in 30 CFR Part 256 have been approved by the Office number 1010-0006. The information is being collected to determine if the applicant filing for a lease or right-of-way on the outer continental shelf is qualified to hold such a lease or right-of-way. This information will be used in making this determination. The obligation to respond is required to obtain a benefit.

[48 FR 43324, Sept. 23, 1983]

### § 256.1 Purpose.

The purpose of these regulations is to establish the procedures under which the Secretary of the Interior will exercise the authority granted to administer a leasing program for minerals and grant rights-of-way on the submerged lands of the Outer Continental Shelf.

### § 256.2 Policy.

The management of Outer Continental Shelf resources is to be conducted in accordance with the findings, purposes and policy directions provided by the Outer Continental Shelf Lands Act Amendments of 1978 (43 U.S.C. 1332, 1801, 1802), and other Executive, legislative, judicial and Departmental guidance. The Secretary of the Interior shall consider available environmental information in making decisions affecting Outer Continental Shelf resources.

### § 256.4 Authority.

The Outer Continental Shelf Lands Act as amended, (43 U.S.C. 1331 et seq.) authorizes the Secretary of the Interior to issue, on a competitive basis, leases for oil and gas, sulphur, geopressured-geothermal and associated resources, and other minerals in submerged lands of the Outer Continental Shelf. The act authorizes the Secretary of the Interior to grant rights-of-way through the submerged lands of the Outer Continental Shelf. The Energy Policy and Conservation Act of 1975 (42 U.S.C. 6213), prohibits joint bidding by major oil and gas producers.

### § 256.5 Definitions.

As used in this part, the term:

(a) "Act" refers to the Outer Continental Shelf Lands Act of August 7, 1953 (43 U.S.C. 1331 et seq.) as amended.

(b) "Director" means the Director, Minerals Management Service.

(c) "OCS" means the Outer Continental Shelf, as that term is defined in 43 U.S.C. 1331(a).

(d) "Secretary" means the Secretary of the Interior.

(e) "MMS" means the Minerals Management Service.

(f) "Coastal zone" means the coastal waters (including the lands therein and thereunder) and the adjacent shorelands (including the waters therein and thereunder), strongly influenced by each other and in proximity to the shorelines of the several coastal States, and includes islands, transition and intertidal areas, salt marshes, wetlands, and beaches, which zone extends seaward to the outer limit of the United States territorial sea and extends inland from the shore lines to the extent necessary to control shorelands, the uses of which have a direct and significant impact on the coastal waters, and the inward boundaries of which may be identified by the several coastal States, pursuant to the authority of section 305(b)(1) of the Coastal Zone Management Act of 1972 (16 U.S.C. 1454(b)(1));

(g) "Affected State" means, with respect to any program, plan, lease sale, or other activity, proposed, conducted, or approved pursuant to the provisions of the act, any State—

(1) The laws of which are declared, pursuant to section 4(a)(2) of the Act, to be the law of the United States for the portion of the Outer Continental Shelf on which such activity is, or is proposed to be conducted;

(2) Which is, or is proposed to be, directly connected by transportation facilities to any artificial island or structure referred to in section 4(a)(1) of the Act;

(3) Which is receiving, or in accordance with the proposed activity will receive, oil for processing, refining, or transshipment which was extracted from the Outer Continental Shelf and transported directly to such State by means of vessels or by a combination of means including vessels;

(4) Which is designated by the Secretary as a State in which there is a substantial probability of significant impact on or damage to the coastal, marine, or human environment, or a State in which there will be significant changes in the social, governmental, or economic infrastructure, resulting from the exploration, development, and production of oil and gas anywhere on the Outer Continental Shelf; or

(5) In which the Secretary finds that because of such activity there is, or will be, a significant risk of serious damage, due to factors such as prevailing winds and currents, to the marine or coastal environment in the event of any oilspill, blowout, or release of oil or gas from vessels, pipelines, or other transshipment facilities;

(h) "Marine environment" means the physical, atmospheric, and biological components, conditions, and factors which interactively determine the productivity, state, conditions, and quality of the marine ecosystem, including the waters of the high seas, the contiguous zone, transitional and intertidal areas, salt marshes, and wetlands within the coastal zone and on the Outer Continental Shelf;

(i) "Coastal environment" means the physical, atmospheric, and biological components, conditions, and factors which interactively determine the productivity, state, conditions, and quality of the terrestrial ecosystem from the shoreline inward to the boundaries of the coastal zone;

(j) "Human environment" means the physical, social, and economic components, conditions, and factors which interactively determine the state, condition, and quality of living conditions, employment, and health of those affected, directly or indirectly, by activities occurring on the Outer Continental Shelf;

(k) "Mineral" includes oil, gas, sulphur, geopressured-geothermal and associated resources, and such other minerals as are disposable under mineral laws applicable to the public lands.

(l) "Authorized officer" means any person authorized by law or by delegation of authority to or within MMS to perform the duties described in this part.

[44 FR 38276, June 29, 1979. Redesignated and amended at 47 FR 47006, 47007, Oct. 22, 1982]

### § 256.7 Cross references.

(a) For Geological Survey regulations governing exploration, development and production on leases, see 30 CFR Part 250 et seq.

(b) For multiple use conflicts, see the Environmental Protection Agency listing of ocean dumping sites—40 CFR Part 228.

(c) For related National Oceanic and Atmospheric Administration programs see:

(1) Marine sanctuary regulations, 15 CFR Part 922;

(2) Fishermen's Contingency Fund, 50 CFR Part 296;

(3) Coastal Energy Impact Program, 15 CFR Part 931;

(d) For Federal Maritime Commission regulations on the oil spill liability of vessels, see 46 CFR Part 544.

(e) For Coast Guard regulations on oil spill liability of operators, see 33 CFR Parts 135 to 136.

(f) For Coast Guard regulations on port access routes, see 33 CFR Part 164.

(g) For compliance with the National Environmental Policy Act, see 40 CFR Parts 1500 through 1508.

(h) For Department of Transportation regulations on offshore pipeline facilities, see 49 CFR Part 195.

(i) For Department of Defense regulations on military activities on offshore areas, see 32 CFR Part 252.

### § 256.8 Leasing maps and diagrams

(a) Any area of the OCS which has been appropriately platted as provided in paragraph (b) of this section, is subject to lease for any mineral not included in a subsisting lease issued under the act or meeting the requirements of subsection (a) of section 6 of the Act. Before any lease is offered or issued an area may be (1) withdrawn from disposition pursuant to section 12(a) of the Act, or (2) designated as an area or part of an area restricted from operation under section 12(d) of the Act.

(b) The MMS shall prepare leasing maps and official protraction diagrams of areas of the OCS. The areas included in each mineral lease shall be in accordance with the appropriate leasing map or official protraction diagram.

### § 256.10 Information to States.

(a) The information covered in this section is prepared by or directly obtained by the Director. Such information is typically not considered to be proprietary or privileged, with the primary exception of specific indications of interest in an area by industry received in response to a Call for Information issued by the Secretary. This information and all other proprietary and privileged information obtained by or under the control of the Minerals Management Service may be released only in accordance with the regulations in 30 CFR Parts 250, 251, and 252.

(b) The Director shall prepare an index to OCS information (see 30 CFR 252.5). The index shall list all relevant actual or proposed programs, plans, reports, environmental impact statements, nominations information, environmental study reports, lease sale information and any similar type of relevant information including, modifications, comments and revisions, prepared by or directly obtained by the Director under the act. The index shall be sent on a regular basis to affected States and, upon request, it shall be sent to any affected local government. The public shall be informed of the availability of the index.

(c) Upon request, the Director shall transmit to affected States, local governments or the public, a copy of any information listed in the index which is subject to the control of the MMS in accordance with the requirements and subject to the limitations of the Freedom of Information Act (5 U.S.C. 552) and regulations implementing said Act, and the regulations contained in 43 CFR Part 2, except as provided in paragraph (d) of this section.

(d) Upon request, the Director shall provide relative indications of interest in areas as well as any comments filed in response to a Call for Information for a proposed sale. However, no information transmitted shall identify any particular area with the name of any particular party so as not to compromise the competitive position of any participants in the process of indicating interest.

[44 FR 38276, June 29, 1979, as amended at 47 FR 25970, June 16, 1982. Redesignated and amended at 47 FR 47006, 47007, Oct. 22, 1982]

### § 256.11 Helium.

(a) Each lease issued or continued under these regulations shall be subject to a reservation by the United States, under section 12(f) of the Act, of the ownership of and the right to extract helium from all gas produced from the leased area.

(b) In case the United States elects to take the helium, the lessee shall deliver all gas containing helium, or the portion of gas desired, to the United States at any point on the leased area or at an onshore processing facility. Delivery shall be made in the manner required by the United States to such plants or reduction works as the United States may provide.

(c) The extraction of helium shall not cause a reduction in the value of the lessee's gas or any other loss for which he is not reasonably compensated, except for the value of the helium extracted. The United States shall determine the amount of reasonable compensation. The United States shall have the right to erect, maintain and operate on the leased area any and all reduction works and other equipment necessary for the extraction of helium. The extraction of helium shall not cause substantial delays in the delivery of natural gas produced to the purchaser of that gas.

## Subpart B—Oil and Gas Leasing Program

### § 256.14 Definitions.

As used in this subpart, the term—"Affected State" and "affected States" means Maine, New Hampshire, Massachusetts, Rhode Island, Connecticut, New York, New Jersey, Pennsylvania, Delaware, Maryland, Virginia, North Carolina, South Carolina, Georgia, Florida, Alabama, Mississippi, Louisiana, Texas, California, Oregon, Washington, and Alaska.

[44 FR 38276, June 29, 1979. Redesignated at 47 FR 47006, Oct. 22, 1982; 47 FR 50684, Nov. 9, 1982]

### § 256.16 Receipt and consideration of nominations; public notice and participation.

(a) During preparation of a proposed 5-year leasing program, the Secretary shall invite and consider suggestions and relevant information for such program from Governors of affected States, local government, industry, other Federal agencies, including the Attorney General in consultation with the Federal Trade Commission, and all interested parties, including the general public. This request for information shall be issued as a notice in the Federal Register. Local governments wishing to respond to such request shall first submit their responses to the Governor of the State in which the local government is located.

(b) The Secretary shall send letters to the Governors of the affected States requesting them to identify specific laws, goals, and policies which they believe should be considered by the Secretary in connection with the leasing program. The Secretary shall also request from the Secretary of Energy information on regional and national energy markets, on OCS production goals and on transportation networks.

[44 FR 38276, June 29, 1979. Redesignated at 47 FR 47006, Oct. 22, 1982; 47 FR 50684, Nov. 9, 1982]

### § 256.17 Review by State and local governments and other persons.

(a)(1) The Secretary shall prepare a proposed leasing program. At least 60 days prior to publication of the proposed program in the Federal Register, a copy of the draft of the proposed program shall be forwarded to the Governor of each affected State for comment. The Governor may solicit comments from local governments in his or her State which the Governor determines will be affected by the proposed program.

(2) The Secretary shall reply in writing to any comment on the draft of the proposed program from the Governor of an affected State which is received at least 15 days prior to the submission of the proposed program to the Congress and publication in the Federal Register. All such correspondence between the Secretary and Governor of such State shall accompany the proposed program when it is submitted to the Congress.

(b) The proposed leasing program shall be submitted to the Governors of the affected States for review and comment at the time it is submitted to the Congress and the Attorney General and published in the Federal Register. The Governor of an affected State shall, upon request from any local government affected by the program, submit a copy of the proposed program to such local government. Comments and recommendations on any aspect of the proposed program may be submitted by a State or local government or other persons to the Secretary within 90 days after the date of its publication in the FEDERAL REGISTER. Comments and recommendations from local governments shall be submitted first to the Governor of the State in which the local government is located.

(c) At least 60 days prior to approving the final leasing program and any later significant revision, the Secretary shall submit it to the President and the Congress, together with any comments. The Secretary shall indicate in such submission why any specific recommendation of the Attorney General or of a State or local government was not accepted.

[44 FR 38276, June 29, 1979, as amended at 47 FR 25970, June 16, 1982. Redesignated at 47 FR 47006, Oct. 22, 1982; 47 FR 50684, Nov. 9, 1982]

**§ 256.19 Periodic consultation with interested parties.**

The Secretary shall provide for periodic consultation with State and local governments, existing and potential oil and gas lessees and permittees, and representatives of other individuals or organizations engaged in any activity in or on the OCS, including those involved in fish and shellfish recovery, and recreational activities. This consultation shall take place primarily through appropriate public notice as described in §§ 256.16 and 256.17 and through the OCS Advisory Board and its committees, on a regional and national basis. Meetings of the OCS Advisory Board shall be held on specific issues as required by the Board's charter.

[44 FR 38276, June 29, 1979. Redesignated at 47 FR 47006, Oct. 22, 1982; 47 FR 50684, Nov. 9, 1982]

**§ 256.20 Consideration of coastal zone management program.**

In the development of the leasing program, consideration shall be given to the coastal zone management program being developed or administered by an affected coastal State under section 305 or 306 of the Coastal Zone Management Act of 1972 as amended, (16 U.S.C. 1454, 1455). Information concerning the relationship between a State's coastal zone management program and OCS oil and gas activity shall be requested from the Governors of the affected coastal States and from the Secretary of Commerce prior to the development of the proposed leasing program at the time information is requested under § 256.16 of this part.

[44 FR 38276, June 29, 1979. Redesignated at 47 FR 47006, Oct. 22, 1982; 47 FR 50684, Nov. 9, 1982]

## Subpart C—Reports From Federal Agencies

**§ 256.22 General.**

For oil and gas lease sales shown in an approved leasing schedule and as the need arises for other mineral leasing, the Director shall prepare a report describing the general geology and potential mineral resources of the area under consideration. The Director may request other interested Federal Agencies to prepare reports describing, to the extent known, any other valuable resources contained within the general area and the potential effect of mineral operations upon the resources or upon the total environment or other uses of the area.

[51 FR 6107, Feb. 20, 1986]

## Subpart D—Call for Information and Nominations

**§ 256.23 Information on areas.**

(a) The Director may receive and consider indications of interest in areas for mineral leasing.

(b) In accordance with an approved program and schedule for the leasing of OCS lands which may contain oil and gas, the Director shall issue Calls for Information and Nominations on areas for leasing of such minerals in specified areas. The Call for Information and Nominations shall be published in the FEDERAL REGISTER and may be published in other publications as desirable. Information on areas shall be addressed to the appropriate regional Minerals Manager of the Minerals Management Service with a copy to any other office which may be specified in the Call. The Director shall also request comments on areas which should receive special concern and analysis. For an oil and gas lease sale Call area, the Director may request comments concerning geological conditions, including bottom hazards; archeological or cultural sites on the seabed or nearshore; multiple uses of the proposed leasing area, including navigation, recreation, and fisheries; and other socioeconomic, biological, and environmental information.

[47 FR 25970, June 16, 1982. Redesignated at 47 FR 47006, Oct. 22, 1982 and amended at 51 FR 21345, June 12, 1986]

EFFECTIVE DATE NOTE: At 51 FR 21345, June 12, 1986, § 256.23(b) was revised, effective July 14, 1986. For the convenience of the reader, the superseded text is set forth below.

**§ 256.23 Information on areas.**

* * * * *

(b) In accordance with an approved program and schedule for the leasing of OCS lands which may contain oil and gas, the Director shall issue Calls for Information on areas for leasing of such minerals in specified areas. The Call for Information shall be published in the FEDERAL REGISTER and may be published in other publications as desirable. Information on areas shall be addressed to the appropriate regional Minerals Manager of the Minerals Management Service with a copy to any other office which may be specified in the Call. The Director shall also request comments on areas which should receive special concern and analysis. For an oil and gas lease sale Call area, the Director may request comments concerning geological conditions, including bottom hazards; archeological or cultural sites on the seabed or nearshore; multiple uses of the proposed leasing area, including navigation, recreation and fisheries; and other socioeconomic, biological and environmental information.

### § 256.25 Areas near Coastal States.

(a) At the time information is solicited for leasing of areas within 3 geographical miles seaward of the seaward boundary of any coastal State, the Secretary shall provide the Governor of that State information required under section 8(g)(1) of the Act. The Director shall furnish information identifying the areas for leasing as well as all relevant available environmental data for such areas (See 30 CFR 251.14).

(b) After receipt of information on areas within the area described in paragraph (a) of this section, the Secretary shall inform the Governor of those areas that are to be given further consideration for leasing. The Secretary shall enter into consultation with the Governor to determine whether the area may contain oil or gas pools or fields underlying both the OCS and lands subject to the jurisdiction of the State.

(c) After selection for leasing of those tracts which may have oil or gas pools or fields underlying both the OCS and lands under State jurisdiction, the Secretary shall offer the Governor an opportunity to enter into an agreement for the equitable disposition of revenues from such tracts under section 8(g)(2) of the Act.

(d) If no agreement can be reached within 90 days of the Secretary's offer, the tracts may be leased and all revenues deposited in a separate Treasury account pending equitable disposition of the revenues under sections 8(g) (3) and (4) of the Act.

[44 FR 38276, June 29, 1979, as amended at 47 FR 25971, June 16, 1982. Redesignated at 47 FR 47006, Oct. 22, 1982]

## Subpart E—Area Identification and Tract Size

### § 256.26 General.

(a) The Director, in consultation with appropriate Federal Agencies, shall recommend to the Secretary areas identified for environmental analysis and consideration for leasing. The Director, on his/her own motion, may include in the recommendation areas in which interest has not been indicated in response to a Call. In making a recommendation, the Director shall consider all available environmental information, multiple-use conflicts, resource potential, industry interest and other relevant information. Comments received from States and local governments and interested parties in response to Calls for Information and Nominations shall be considered in making recommendations.

(b) The Director shall evaluate fully the potential effect of leasing on the human, marine and coastal environments, and develop measures to mitigate adverse impacts, including lease stipulations. The views and recommendations of Federal agencies, State agencies, local governments, organizations, industries and the general public shall be used as appropriate. The Director may hold public hearings on the environmental analysis after appropriate notice.

(c) In general, the Director shall seek to inform the public as soon as possible of additions or deletions that occur after the identification of areas.

[47 FR 25971, June 16, 1982. Redesignated at 47 FR 47006, Oct. 22, 1982 and amended at 51 FR 21345, June 12, 1986]

EFFECTIVE DATE NOTE: At 51 FR 21345, June 12, 1986, § 256.26(a) was revised, effective July 14, 1986. For the convenience of the reader, the superseded text is set forth below.

**§ 256.26 General**

(a) The Director, in consultation with appropriate Federal agencies, shall recommend to the Secretary areas identified for environmental analysis and consideration for leasing. The Director, on his/her own motion, may include in the recommendation areas in which interest has not been indicated in response to a Call. In making a recommendation, the Director shall consider all available environmental information, multiple-use conflicts, resource potential, industry interest and other relevant information. Comments received from States and local governments and interested parties in response to Calls for Information shall be considered in making recommendations.

* * * * *

**§ 256.28 Tract size.**

(a) A tract selected for oil and gas leasing shall consist of a compact area not exceeding 5,760 acres, unless the authorized officer finds that a larger area is necessary to comprise a reasonable economic production unit.

(b) The tract size for the leasing of other minerals shall be specified in the notice of sale

[47 FR 25971, June 16, 1982. Redesignated at 47 FR 47006, Oct. 22, 1982]

## Subpart F—Lease Sales

**§ 256.29 Proposed Notice of Sale.**

(a) The Director shall in consultation with appropriate Federal agencies develop measures, including lease stipulations and conditions, to mitigate adverse impacts on the environments. For oil and gas lease sales, appropriate proposed stipulations and conditions shall be contained or referenced in the proposed notice of lease sale.

(b) A proposed notice of lease sale shall be submitted to the Secretary for approval. All comments and recommendations received and the Director's findings or actions thereon, shall also be forwarded to the Secretary.

(c) Upon approval by the Secretary, the proposed Notice of Sale shall be sent to the Governor of any affected State and be published in the FEDERAL REGISTER.

[44 FR 38276, June 29, 1979, as amended at 47 FR 25971, June 16, 1982. Redesignated at 47 FR 47006, Oct. 22, 1982]

**§ 256.31 State comments.**

(a) Within 60 days after notice of a proposed lease sale, a Governor of any affected State or any affected local government in such State may submit recommendations to the Secretary regarding the size, timing or location of the proposed lease sale. Prior to submitting recommendations to the Secretary, any affected local government shall forward such recommendation to the Governor.

(b) The Secretary shall accept such recommendations of the Governor and may accept recommendations of any affected local government if he determines, after having provided the opportunity for consultation, that they provide for a reasonable balance between the national interest and the well-being of the citizens of the affected State. A determination of the national interest shall be based on the findings, purposes and policies of the Act.

(c) The Secretary shall communicate to the Governor, in writing, the reasons for his determination to accept or reject such Governor's recommendations, or to implement any alternative means identified in consultation with the Governor to provide for a reasonable balance between the national interest and the well-being of the citizens of the affected State.

### § 256.32 Notice of sale.

(a) Upon approval of the Secretary, the Director shall publish the notice of lease sale in the FEDERAL REGISTER as the official publication, and may publish the notice in other publications. The publication in the FEDERAL REGISTER shall be at least 30 days prior to the date of the sale. The notice shall state the place and time at which bids shall be filed, and the place, date and hour at which bids shall be opened. The notice shall contain or reference a description of the areas to be offered for lease and any stipulations, terms and conditions of the sale.

(b) Tracts shall be offered for lease by competitive sealed bidding under conditions specified in the notice of lease sale and in accordance with all applicable laws and regulations. A suggested format for bidder submissions appears in Appendix A of this part.

(c) The notice of lease sale shall contain a reference to the OCS lease form which shall be issued to successful bidders.

(d) With the approval of the Secretary, the Director may defer any part of the payment of the cash bonus according to a schedule announced at the time of the notice of lease sale. Payment shall be made no later than 5 years after the date of the lease sale. The schedule shall contain provisions for guaranteed payment of a deferred bonus.

(e) In order to obtain statistical information to determine which bidding alternatives best accomplish the purposes and policies of the Act, the Director may, until September 18, 1983, require each bidder to submit bids for any OCS area in accordance with more than one of the bidding systems described in section 8(a)(1) of the Act. No more than 10 percent of the tracts offered each year shall contain such a requirement. Leases may be awarded using a bidding alternative selected at random for statistical purposes, if it is otherwise consistent with the purposes and policies of the Act.

[44 FR 38276, June 29, 1979. Redesignated and amended at 47 FR 25971, June 16, 1982. Further redesignated at 47 FR 47006, Oct. 22, 1982]

## Subpart G—Issuance of Leases

### § 256.35 Qualifications of lessees.

(a) In accordance with section 8 of the Act, leases shall be awarded only to the highest responsible qualified bidder.

(b) Mineral leases issued pursuant to section 8 of the Act may be held only by: (1) Citizens and nationals of the United States, (2) aliens lawfully admitted for permanent residence in the United States as defined in 8 U.S.C. 1101(a)(20); (3) private, public or municipal corporations organized under the laws of the United States or of any State or of the District of Columbia or territory thereof, or (4) associations of such citizens, nationals, resident aliens, or private, public, or municipal corporations, States, or political subdivisions of States.

### § 256.37 Lease term.

(a)(1) All oil and gas leases shall be issued for an initial period of 5 years, or not to exceed 10 years where the authorized officer finds that such longer period is necessary to encourage exploration and development in areas because of unusually deep water or other unusually adverse conditions.

(2) Oil and gas leases shall be issued for an initial period of 8 years when the leases or any part thereof are in water depths of 400 to 900 meters.

Commencement of an exploratory well is required within the first 5 years of the initial 8-year term to avoid lease cancellation.

(b) An oil and gas lease shall continue after such initial period for as long as oil or gas is produced from the lease in paying quantities, or drilling or well reworking operations as approved by the Secretary are conducted. The term of an oil and gas lease is subject to further extension as provided in § 256.73 of this part.

(c) Sulphur leases shall be issued for a term not to exceed 10 years and so long thereafter as sulphur is produced from the leasehold in paying quantities, or drilling, well reworking, plant construction, or other operations for the production of sulphur, as approved by the Secretary, are conducted thereon.

(d) Other minerals leases shall be issued for such term as may be prescribed at the time of offering the leases in the notice of lease sale.

[44 FR 38276, June 29, 1979. Redesignated at 47 FR 47006, Oct. 22, 1982 and amended at 50 FR 49043, Nov. 29, 1985]

### § 256.38 Joint bidding provisions.

### § 256.40 Definitions.

The following definitions shall be applicable to § 256.38 of this part:

(a) *"Single bid"* means a bid submitted by one person for an oil and gas lease under section 8(a) of the Act.

(b) *"Joint bid"* means a bid submitted by two or more persons for an oil and gas lease under section 8(a) of the Act.

(c) *"Average daily production"* is the total of all production in an applicable production period which is chargeable under § 256.43 of this title divided by the exact number of calendar days in the applicable production period.

(d) *"Barrel"* means 42 United States gallons.

(e) *"Crude oil"* means a mixture of liquid hydrocarbons including condensate that exists in natural underground reservoirs and remains liquid at atmospheric pressure after passing through surface separating facilities, but does not include liquid hydrocarbons produced from tar sand, gilsonite, oil shale, or coal.

(f) *"An economic interest"* means any right to, or any right dependent upon, production of crude oil, natural gas, or liquefied petroleum products and shall include, but not be limited to, a royalty interest, or overriding royalty interest, whether payable in cash or in kind, a working interest, a net profits interest, a production payment, or a carried interest.

(g) *"Liquefied petroleum products"* means natural gas liquid products including the following: ethane, propane, butane, pentane, natural gasoline, and other natural gas products recovered by a process of absorption, adsorption, compression, or refrigeration cycling, or a combination of such processes.

(h) *"Natural gas"* means a mixture of hydrocarbons and varying quantities of nonhydrocarbons that exist in the gaseous phase.

(i) *"Oil and gas lease"* means an oil and gas lease either offered or issued pursuant to the provisions of the Act.

(j) *"Owned"* means:

(1) *With respect to crude oil*—having either an economic interest in or a power of disposition over the production of crude oil;

(2) *With respect to natural gas*—having either an economic interest in or a power of disposition over the production of natural gas; and

(3) *With respect to liquefied petroleum products*—having either an economic interest in or a power of disposition over any liquefied petroleum product at the time of completion of the liquefaction process.

(k) *"Prior production period"* means the continuous six month period of January 1 through June 30 preceding November 1 through April 30 for joint bids submitted during the six month bidding period from November 1 through April 30, and means the continuous six month period of July 1 through December 31 preceding May 1 through October 31 for joint bids submitted during the six month bidding period from May 1 through October 31.

(l) *"Production"*—(1) *Of crude oil* means the volume of crude oil produced worldwide from reservoirs during the prior production period. The amount of such crude oil production shall be established by measurement of volumes delivered at the point of custody transfer (e.g., from storage tanks to pipelines, trucks, tankers, or other media for transport to refineries or terminals) with adjustments for:

(i) Net differences between opening and closing inventories, and

(ii) Basic sediment and water;

(2) *Of natural gas* means the volume of natural gas produced worldwide from natural oil and gas reservoirs during the prior production period, with adjustments, where applicable, to reflect

(i) The volume of gas returned to natural reservoirs; and

(ii) The reduction of volume resulting from the removal of natural gas liquids and nonhydrocarbon gases.

(3) *Of liquefied petroleum products* means the volume of natural gas liquids produced from reservoir gas and liquefied at surface separators, field facilities, or gas processing plants worldwide during the prior production period; these liquefied petroleum products include the following:

(i) *Condensate*—natural gas liquids recovered from gas well gas (associated and non-associated) in separators or field facilities;

(ii) *Gas plant products*—natural gas liquids recovered from natural gas in gas processing plants and from field facilities. Gas plant products shall include the following as classified according to the standards of the Natural Gas Processors Association (NGPA) or the American Society for Testing and Materials (ASTM):

(A) Ethane—$C^2H^6$

(B) Propane—$C^3H^8$

(C) Butane—$C^4H^{10}$ including all products covered by NGPA specifications for commercial butane.

(*1*) Isobutane.

(*2*) Normal butane.

(*3*) Other butanes—all butanes not included as isobutane or normal butane;

(D) Butane Propane Mixtures—All products covered by NGPA specifications for butane-propane mixtures;

(E) Natural Gasoline—A mixture of hydrocarbons extracted from natural gas, which meet vapor pressure, end point, and other specifications for natural gasoline set by NGPA;

(F) Plant Condensate—A natural gas plant product recovered and separated as a liquid at gas inlet separators or scrubbers in processing plants or field facilities; and

(G) Other Natural Gas Plant Products meeting refined product standards (i.e., gasoline, kerosene, distillate, etc.).

(m) *"Six month bidding period"* means the six month period of time

(1) From May 1 through October 31; or

(2) From November 1 through April 30, respectively.

[44 FR 38276, June 29, 1979; 44 FR 55380, Sept. 26, 1979. Redesignated at 47 FR 47006, Oct. 22, 1982]

### § 256.41 Joint bidding requirements.

(a) Any person who submits a joint bid for any oil and gas lease during a 6-month bidding period, and who was chargeable for the prior production period with an average daily production in excess of 1.6 million barrels of crude oil, natural gas and liquified petroleum products, shall have filed under oath with the Director, a Statement of Production of crude oil, natural gas and liquified petroleum products, hereinafter referred to as a Statement of Production, no later than 45 days prior to the commencement of the applicable 6-month bidding period of May 1 through October 31, and November 1 through April 30. Statements of Production shall be submitted to the Director, MMS (Attention: Offshore Leasing Management Division), Washington, D.C. 20240. The Statement of Production shall indicate that the person was chargeable, in accordance with § 256.43 of this part, with an average daily production in excess of 1.6 million barrels of crude oil, natural gas and liquified petroleum products for the prior production period. The Director shall publish semi-annually in the FEDERAL REGISTER a "List of Restricted Joint Bidders" to be effective immediately upon publication and to continue in force and effect until a subsequent list is published. The "List of Restricted Joint Bidders" shall consist of those persons, who in the judgment of the Director, based on information available to him, including, but not limited to, sworn Statements of Production, are chargeable under § 256.43 of this part with an average daily production in excess of 1.6 million barrels of crude oil, natural gas and liquified petroleum products for the prior production period.

(b) When a person is placed on the List of Restricted Joint Bidders the Director shall serve that person either personally or by certified mail, return receipt requested, with a copy of the Director's Order placing that person on the List of Restricted Joint Bidders. Any appeal from that Order or from an adverse effect of that Order shall be made in accordance with the provisions of 43 CFR Part 4.

(c) The submission of a Statement of Production or of a detailed Report of Production under § 256.46(g) of this part which misrepresents the chargeable production of the reporting person shall constitute failure to comply with these regulations and any lease awarded in reliance on that Statement or Report of Production may be canceled, pursuant to section 8(o) of the Act and regulations issued thereunder as having been obtained by fraud or misrepresention.

(d) The Secretary may exempt a person from the provisions of §§ 256.41(a), 256.44, 256.46(g) and 256.62(b) of this part if it is found, on the record, after an opportunity for an agency hearing, that lands being offered have extremely high cost exploration and development problems and that exploration and development will not occur on such lands unless the exemption is granted.

[44 FR 38276, June 29, 1979; 44 FR 55380, Sept. 26, 1979, as amended at 45 FR 69174, Oct. 17, 1980; 47 FR 25971, June 16, 1982. Redesignated and amended at 47 FR 47006, 47007, Oct. 22, 1982]

### § 256.43 Chargeability for production.

(a) As used in this section the following definitions shall control:

(1) *"Person"* means a natural person or company.

(2) *"Company"* means a corporation, a partnership, an association, a joint-stock company, a trust, a fund, or any group of persons whether incorporated or not; it also means any receiver, trustee in bankruptcy, or similar official acting for such a company.

(3) *"Subsidiary"* means a company 50 percent or more of whose stock or other interest having power to vote for the election of directors, trustees, or other similar controlling body of the company is directly or indirectly owned, controlled, or held with the power to vote by another company; a subsidiary shall be deemed a subsidiary of the other company owning, controlling, or holding 50 percent or more of the stock or other voting interest.

(4) *"Security or securities"* means any note, stock, treasury stock, bond, debenture, evidence of indebtedness, certificate of interest or participation in any profit-sharing agreement, collateral-trust certificate, pre-organization certificate or subscription, transferable share, investment contract, voting-trust certificate, certificate of deposit for a security, fractional undivided interest in oil, gas, or other mineral rights, or, in general, any interest or instrument commonly known as a "security" or any certificate of interest or participation in, temporary or interim certificate for, receipt for, guarantee of, or warrant or right to subscribe to or purchase any of the foregoing.

(b) A person filing a Statement of Production under § 256.41 of this part shall be charged with the following production during the applicable prior production period:

(1) The average daily production in barrels of crude oil, natural gas, and liquefied petroleum products which it owned worldwide;

(2) The average daily production in barrels of crude oil, natural gas, and liquefied petroleum products owned worldwide by every subsidiary of the reporting person;

(3) The average daily production in barrels of crude oil, natural gas, and liquefied petroleum products owned worldwide by any person or persons of which the reporting person is a subsidiary; and

(4) The average daily production in barrels of crude oil, natural gas, and liquefied petroleum products owned worldwide by any subsidiary, other than the reporting person, of any person or persons of which the reporting person is a subsidiary.

(c) A person filing a Statement of Production shall be charged with, in addition to the production chargeable under paragraph (b) of this section, but not in duplication thereof, its proportionate share of the average daily production in barrels of crude oil, natural gas, and liquefied petroleum products owned worldwide by every person:

(1) Which has an interest in the reporting person, and

(2) In which the reporting person has an interest, whether the interest referred to in paragraphs (c) (1) and (2) of this section is by virtue of own-

ership of securities or other evidence of ownership, or by participation in any contract, agreement, or understanding respecting the control of any person or of any person's production of crude oil, natural gas, or liquefied petroleum products, equal to said interest. As used in paragraph (c) of this section "interest" means an interest of at least 5 percent of the ownership or control of a person.

(d) All measurements of crude oil and liquefied petroleum products under this section shall be at 60° F.

(e)(1) For purposes of computing production of natural gas under § 256.41 of this part, chargeability under this section, and reporting under § 256.46(g) of this part, 5,626 cubic feet of natural gas at 14.73 pounds per square inch (msl) shall equal one barrel.

(2) For purposes of computing production of liquefied petroleum products under § 256.41 of this part, chargeability under § 256.46(g) of this part, 1.454 barrels of natural gas liquids at 60° F shall equal one barrel of crude oil.

[44 FR 38276, June 29, 1979; 44 FR 55380, Sept. 26, 1979, as amended at 47 FR 25971, June 16, 1982. Redesignated at 47 FR 47006, 47007, Oct. 22, 1982]

### § 256.44 Bids disqualified.

The following bids for any oil and gas lease shall be disqualified and rejected in their entirety:

(a) A joint bid submitted by 2 or more persons who are on the effective List of Restricted Joint Bidders; or

(b)(1) A joint bid submitted by two or more persons when 1 or more of those persons is chargeable for the prior production period with an average daily production in excess of 1.6 million barrels of crude oil, natural gas and liquified petroleum products and has not filed a Statement of Production as required by § 256.41 of this part for the applicable 6-month bidding period, or (2) any of those persons have failed or refused to file a detailed report of production when required to do so under § 256.46(g) of this part, or

(c) A single or joint bid submitted pursuant to an agreement (whether written or oral, formal or informal, entered into or arranged prior to or simultaneously with the submission of such single or joint bid, or prior to or simultaneously with the award of the bid upon the tract) which provides:

(1) For the assignment, transfer, sale, or other conveyance of less than a 100 percent interest in the entire tract on which the bid is submitted, by a person or persons on the List of Restricted Joint Bidders, effective on the date of submission of the bid, to another person or persons on the same List of Restricted Joint Bidders; or

(2) For the assignment, sale, transfer or other conveyance of less than a 100 percent interest in any fractional interest in the entire tract (which fractional interest was originally acquired by the person making the assignment, sale, transfer or other conveyance, under the provisions of the act) by a person or persons on the List of Restricted Joint Bidders, effective on the date of submission of the bid, to another person or persons on the same List of Restricted Joint Bidders; or

(3) For the assignment, sale, transfer, or other conveyance of any interest in a tract by a person or persons not on the List of Restricted Joint Bidders, effective on the date of submission of the bid, to 2 or more persons on the same List of Restricted Joint Bidders; or

(4) For any of the types of conveyances described in paragraphs (c)(1), (2) or (3) of this section where any party to the conveyance is chargeable for the prior production period with an average daily production in excess of 1.6 million barrels of crude oil, natural gas and liquified petroleum products and has not filed a Statement of Production pursuant to § 256.41 of this part for the applicable 6-month bidding period. Assignments expressly required by law, regulation, lease or stipulation to lease shall not disqualify an otherwise qualified bid; or

(d) A bid submitted by or in conjunction with a person who has filed a false, fraudulent or otherwise intentionally false or misleading detailed Report of Production.

[44 FR 38276, June 29, 1979; 44 FR 55380, Sept. 26, 1979, as amended at 45 FR 69175, Oct. 17, 1980; 47 FR 25971, June 16, 1982. Redesignated at 47 FR 47006, Oct. 22, 1982]

### § 256.46 Submission of bids.

(a) A separate sealed bid shall be submitted for each tract unit bid upon as described in the notice of lease sale. A bid may not be submitted for less than an entire tract.

(b) Each bidder shall submit with the bid, a certified or cashier's check or bank draft on a solvent bank, or cash, or any other form of payment approved by the Secretary for one-fifth of the amount of the cash bonus, unless otherwise stated in the Notice of Sale.

(c) If the bidder is an individual a statement of citizenship shall accompany the bid.

(d) If the bidder is an association (including a partnership), the bid shall be accompanied by a certified statement indicating the State in which it is registered and that it is authorized to hold mineral leases on the OCS, or appropriate reference to statements or records previously submitted to an MMS OCS office (including material submitted in compliance with prior regulations).

(e) If the bidder is a corporation, the following information shall be submitted with the bid:

(1) A statement certified by the corporate Secretary or Assistant Secretary over the corporate seal showing the State in which it was incorporated and that it is authorized to hold mineral leases on the OCS, or appropriate reference to statements or records previously submitted to an MMS OCS office (including material submitted in compliance with prior regulations).

(2) Evidence of authority of persons signing to bind the corporation. Such evidence may be in the form of either a certified copy of the minutes of the board of directors or of the bylaws indicating that the person signing has authority to do so; or a certificate to that effect signed by the Secretary or Assistant Secretary of the corporation over the corporate seal, or appropriate reference to statements or records previously submitted to an MMS OCS office (including material submitted in compliance with prior regulations). Bidders are advised to keep their filings current.

(3) The bid shall be executed in conformance with corporate requirements.

(f) Bidders should be aware of the provisions of 18 U.S.C. 1860, prohibiting unlawful combination or intimidation of bidders.

(g) To verify the accuracy of any statement submitted pursuant to § 256.41 of this part, the Director may require the person submitting such information to:

(1) Submit no later than 30 days after receipt of the request by the Director, a detailed Report of Production which shall list, in barrels, the average daily production of crude oil, natural gas and liquefied petroleum products chargeable to the reporting person in accordance with § 256.43 of this part for the prior production period, and

(2) Permit the inspection and copying by an official of the Department of the Interior of such documents, records of production of crude oil, natural gas and liquified petroleum products, analyses and other material as are necessary to demonstrate the accuracy of any statement or information contained in any Report of Production.

(h) No bid for a lease may be submitted if the Secretary finds, after notice and hearing, that the bidder is not meeting due diligence requirements on other OCS leases.

[44 FR 38276, June 29, 1979, as amended at 45 FR 69175, Oct. 17, 1980; 47 FR 25971, June 16, 1982. Redesignated at 47 FR 47006, Oct. 22, 1982]

### § 256.47 Award of leases.

(a) Sealed bids received in response to the notice of lease sale shall be opened at the place, date and hour specified in the notice. The opening of bids is for the sole purpose of publicly announcing and recording the bids received and no bids shall be accepted or rejected at that time.

(b) The United States reserves the right to reject any and all bids received for any tract, regardless of the amount offered.

(c) In the event the highest bids are tie bids, the tie bidders (unless they would be disqualified under § 256.35(b) of this part, or disqualified under § 256.44 of this part if their bids had been joint bids) may file with the Director, within 15 days after notification, an agreement to accept the lease jointly; otherwise all bids shall be rejected.

(d) Pursuant to section 8(c) of the Act, the Attorney General may review the results of the lease sale prior to the acceptance of bids and issuance of leases.

(e)(1) The decision of the authorized officer on bids shall be the final action of the Department, subject only to reconsideration by the Secretary, pursuant to written request, of the rejection of the high bid. The delegation of review authority to the Office of Hearings and Appeals shall not be applicable to decisions on high bids for leases on the Outer Continental Shelf.

(2) In the final notice of sale, the Secretary may identify tracts or blocks which are subject to another nation's claims of jurisdiction and control which conflict with those of the United States, or which are subject to defense-related activities that may be incompatible with mineral exploration/development activities. For a tract or block so identified, the authorized officer must accept or reject the bid within the time specified in the notice of sale. For a tract not so identified, the authorized officer must accept or reject the bid within 90 days after the date on which bids are opened. Any bid not accepted within the prescribed time shall be considered rejected.

(3) Any high bidder whose bid is rejected by the authorized officer may, within 15 days of such rejection, file with the Secretary, with a copy to the authorized officer, a written request for reconsideration accompanied by a statement of reasons. The Secretary shall respond in writing either affirming or reversing the decision of the authorized officer.

(f) Written notice of the authorized officer's action shall be transmitted promptly to those bidders whose deposits have been held. If a bid is accepted, such notice shall transmit three copies of the lease to the successful bidder. As provided in § 218.155, the bidder shall, not later than the 11th business day after receipt of the lease, execute the lease, pay the first-year's rental, and unless deferred, pay the balance of the bonus bid. The bidder shall also file a bond as required in § 256.58 of this title. Deposits and any interest accrued shall be refunded on high bids subsequently rejected.

(g) If the successful bidder fails to execute the lease within the prescribed time or otherwise comply with the applicable regulations the deposit shall be forfeited and disposed of as other receipts under the act.

(h) If, before the lease is executed on behalf of the United States, the land which would be subject to the lease is withdrawn or restricted from leasing, all deposits and any interest due shall be refunded.

(i) If the awarded lease is executed by an agent acting on behalf of the bidder, the lease shall be accompanied by evidence that the bidder authorized the agent to execute the lease. When three copies of the lease are executed and returned to the authorized officer, the lease shall be executed on behalf of the United States, and one fully executed copy shall be transmitted to the successful bidder.

(j) No lease or permit shall be issued for any area within 15 statute miles of the boundaries of the Point Reyes Wilderness in California unless the State of California allows exploration, development or production activities in the adjacent navigable waters of the State under section 11(h) of the Act.

[44 FR 38276, June 29, 1979, as amended at 47 FR 25972, June 16, 1982. Redesignated at 47 FR 47006, Oct. 22, 1982, and amended at 49 FR 8606, Mar. 8, 1984; 49 FR 10056, Mar. 16, 1984; 50 FR 47378, Nov. 18, 1985]

### § 256.49 Lease form.

Oil and gas leases and leases for sulphur shall be issued on forms approved by the Director. Other mineral leases shall be issued on such forms as may be prescribed by the Secretary.

[47 FR 25972, June 16, 1982. Redesignated at 47 FR 47006, Oct. 22, 1982]

### § 256.50 Dating of leases.

All leases issued under the regulations in this part shall be dated and become effective as of the first day of the month following the date leases are signed on behalf of the lessor. When prior written request is made, a lease may be dated and become effective as of the first day of the month within which it is so signed.

## Subpart H—Rentals and Royalties—[Reserved]

## Subpart I—Bonding

### § 256.58 Acceptable bonds.

(a) The successful bidder, prior to the issuance of an oil and gas or sulphur lease, shall furnish the authorized officer a corporate surety bond in the sum of $50,000 conditioned on compliance with all the terms and conditions of the lease. Such bond shall not be required if the bidder already maintains or furnishes a bond in the sum of $300,000 conditioned on compliance with the terms of oil and gas and sulphur leases held by the bidder on the OCS for the area in which the lease to be issued is situated.

(b) For the purposes of this section, there are four areas:

(1) The Gulf of Mexico;

(2) The area offshore the Pacific Coast States of California, Oregon, Washington, and Hawaii;

(3) The area offshore the Coast of Alaska; and

(4) The area offshore the Atlantic Coast.

(c) A separate bond shall be required for each area. An operator's bond in the same amount may be substituted at any time for the lessee's bonds.

(d) The amount of bond coverage on leases for other minerals shall be determined by the Director at the time of the offer to lease and shall be stated in the notice of lease sale.

(e) If, as the result of a default, the surety on a Mineral Lease Bond makes payment to the United States of any indebtedness under a lease secured by the bond, the face amount of such bond and the surety's liability shall be reduced by the amount of such payment.

(f) A new bond in the amount of $300,000 shall be posted within 6 months or such shorter period as the authorized officer may direct after a default. In lieu of the $300,000 bond required in this paragraph, a separate bond for each lease may be filed within the time period authorized. Failure to post a new bond shall, at the discretion of the authorized officer, be the basis of cancellation of all leases covered by the defaulted bond, except to the extent a separate bond in lieu of the $300,000 bond required by this paragraph has been filed within the time authorized.

(g) With the approval of the Secretary, the Director may provide at the time of the notice of lease sale that (1) the successful bidder for a lease where payment of any part of the cash bonus has been deferred pursuant to 43 U.S.C. 1337(a)(2), as implemented by 30 CFR 256.32(d), shall furnish the authorized officer a corporate surety bond in the amount of the cash bonus deferred conditioned on payment of the cash bonus deferred according to the notice of lease sale; and (2) the high bidder for a lease where the decision to accept the high bid has been deferred, pursuant to 43 U.S.C. 1337(a)(1), as implemented by 30 CFR 256.47(e)(2), shall furnish the authorized officer a corporate surety bond in the amount of the bid not already remitted, conditioned on payment of the yet to be remitted amount after the bidder has been notified that his high bid has been accepted, within the time specified in the notice of lease sale.

[44 FR 38276, June 29, 1979. Redesignated at 47 FR 47006, Oct. 22, 1982, and amended at 50 FR 47378, Nov. 18, 1985]

### § 256.59 Form of bond.

All bonds furnished by a bidder, lessee, or operator shall be on a form, or in a form approved by the Director.

[50 FR 47379, Nov. 18, 1985]

### § 256.61 Additional bonds.

The authorized officer may require additional security in the form of a supplemental bond or bonds or to increase the coverage of an existing bond if, after operations or production have begun, such additional security is deemed necessary.

## Subpart J—Assignments, Transfers, and Extensions

### § 256.62 Assignment of leases or interests therein.

(a) Subject to the approval of the authorized officer, leases, or any undivided interest therein, may be assigned in whole, or as to any officially designated subdivision, to anyone qualified under § 256.35(b) of this part to hold a lease.

(b) An assignment shall be void if it is made pursuant to any prelease agreement described in § 256.44(c) of this part that would cause a bid to be disqualified.

(c) Any approved assignment shall be deemed to be effective on the first day of the lease month following its filing in the appropriate office of the MMS, unless at the request of the parties, an earlier date is specified in the approval.

(d) The assignor shall be liable for all obligations under the lease accruing prior to the approval of the assignment.

(e) The assignee shall be liable for all obligations under the lease subsequent to the effective date of an assignment, and shall comply with all regulations issued under the Act.

### § 256.64 Requirements for filing of transfers.

(a)(1) All instruments of transfer of a lease or of an interest therein as to any officially designated subdivision, including operating rights, subleases and assignments of record interest, shall be filed in triplicate for approval within 90 days from the date of final execution. They shall include a statement over the transferee's own signature with respect to citizenship and qualifications similar to that required of a lessee and shall contain all of the terms and conditions agreed upon by the parties thereto. Carried working interests, overriding royalty interests or payments out of production may be created or transferred without requirement for filing or approval.

(2) An application for approval of any instrument required to be filed shall not be accepted unless accompanied by a nonrefundable fee of $25. Any document not required to be filed by these regulations but submitted for record purposes shall be accompanied by a nonrefundable fee of $25 per lease affected. Such documents may be rejected at the discretion of the authorized officer.

(b) An attorney in fact, in behalf of the holder of a lease, operating rights or sublease, shall furnish evidence of authority to execute the assignment or application for approval and the statement required by § 256.46 of this part.

(c) Where an assignment creates a segregated lease, a bond shall be furnished in the amount prescribed in § 256.58 of this part. Where an assignment does not create separate leases, the assignee, if the assignment so provides and the surety consents, may become a joint principal on the bond with the assignor.

(d) An heir or devisee of a deceased holder of a lease, or any interest therein, shall be recognized as the lawful successor to such lease or interest, if evidence of status as an heir or devisee is furnished in the form of:

(1) A certified copy of an appropriate order or decree of the court having jurisdiction of the distribution of the estate or,

(2) If no court action is necessary, the statements of two disinterested parties having knowledge of the facts or a certified copy of the will.

(e) In addition to the requirements of paragraph (d) of this section, the heirs or devisees shall file statements that they are the persons named as successors to the estate with evidence of their qualifications as provided in § 256.46 of this part.

(f) In the event an heir or devisee is unable to qualify to hold the lease or interest, the heir or devisee shall be recognized as the lawful successor of the deceased and be entitled to hold the lease for a period of not to exceed 2 years from the date of death of the predecessor in interest.

(g) Each obligation under any lease and under the regulations in this part shall inure to the heirs, executors, administrators, successors, or assignees of the lessee.

(h) Where the proposed assignment or transfer is by a person who, at the time of acquisition of an interest in the lease, was on the List of Restricted Joint Bidders, and that assignment or transfer is of less than the entire interest of the assignor or transferor, to a person or persons on the same List of Restricted Joint Bidders, the assignor or transferor shall file a copy, prior to approval of the assignment, of all agreements applicable to the acquisition of that lease or a fractional interest.

### § 256.65 Attorney General review.

Prior to the approval of an assignment or transfer, the Secretary shall consult with and give due consideration to the views of the Attorney General. The Secretary may act on an assignment or transfer if the Attorney General has not responded to the request for consultation within 30 days of said request.

### § 256.67 Separate filings for assignments.

A separate instrument of assignment shall be filed for each lease. When transfers to the same person, association or corporation, involving more than one lease are filed at the same time for approval, one request for approval and one showing as to the qualifications of the assignee shall be sufficient.

### § 256.68 Effect of assignment of a particular tract.

(a) When an assignment is made of all the record title to a portion of the acreage in a lease, the assigned and retained portions become segregated into separate and distinct leases. In such a case, the assignee becomes a lessee of the Government as to the segregated tract that is the subject of assignment, and is bound by the terms of the lease as though the lease had been obtained from the United States in the assignee's own name, and the assignment, after its approval, shall be the basis of a new record. Royalty, minimum royalty and rental provisions of the original lease shall apply separately to each segregated portion.

(b) For assignments of a portion of an oil and gas lease approved after the effective date of ths section, each segregated lease shall continue in full force and effect for the primary term of the original lease and so long thereafter as oil or gas is produced from that segregated portion of the leased area in paying quantities or drillng or well reworking operations as approved by the Secretary are conducted.

(c) For those assignments approved prior to the effective date of this section, each segregated lease shall continue in full force and effect for the primary term of the original lease and so long thereafter as oil and gas may be produced from the original leased area in paying quantities or drilling or well reworking operations, as approved by the Secretary, are conducted.

### § 256.70 Extension of lease by drilling or well reworking operations.

The term of a lease shall be extended beyond the primary term so long as drilling or well reworking operations are approved by the Secretary according to the conditions set forth in 30 CFR 250.35.

### § 256.71 Directional drilling.

In accordance with an approved exploration plan or development and production plan, a lease may be maintained in force by directional wells drilled under the leased area from surface locations on adjacent or adjoining land not covered by the lease. In such circumstances, drilling shall be considered to have commenced on the leased area when drilling is commenced on the adjacent or adjoining land for the purpose of directional drilling under the leased area through any directional well surfaced on adjacent or adjoining land. Production, drillling or reworking of any such directional well shall be considered production or drilling or reworking operations on the leased area for all purposes of the lease.

### § 256.72 Compensatory payments as production.

If an oil and gas lessee makes compensatory payments as provided in 30 CFR 250.33 and if the lease is not being maintained in force by other production of oil or gas in paying quantities or by other approved drilling or reworking operations, such payments shall be considered as the equivalent of production in paying quantities for all purposes of the lease.

### § 256.73 Effect of suspensions on lease term.

(a) If the Director directs the suspension of either operations or production, or both, under the provisions of 30 CFR 250.12 (c), (d)(1) or (d)(4) with respect to any lease in its primary term, the primary term of the lease shall be extended by a period equivalent to the period of the suspension.

(b) If the Director orders or approves the suspension of either operations or production, or both, under the provision for 30 CFR 250.12 (c), (d)(1), or (d)(4) with respect to any lease extended beyond its primary term, the term of the lease shall not be deemed to expire so long as the suspension remains in effect.

[44 FR 38276, June 29, 1979; 44 FR 55380, Sept. 26, 1979. Redesignated at 47 47006, Oct. 22, 1982]

## Subpart K—Termination of Leases

### § 256.76 Relinquishment of leases or parts of leases.

A lease or any officially designated subdivision thereof may be surrendered by the record title holder by filing a written relinquishment, in triplicate, with the appropriate OCS office of the MMS. No filing fee is required. A relinquishment shall take effect on the date it is filed subject to the continued obligation of the lessee and the surety to make all payments due, including any accrued rentals, royalties and deferred bonuses and to abandon all wells and condition or remove all platforms and other facilities on the land to be relinquished to the satisfaction of the Director.

### § 256.77 Cancellation of leases.

(a) Any nonproducing lease issued under the act may be cancelled by the authorized officer whenever the lessee fails to comply with any provision of the act or lease or applicable regulations, if such failure to comply continues for 30 days after mailing of notice by registered or certified letter to the lease owner at the owner's record post office address. Any such cancellation is subject to judicial review as provided in section 23(b) of the Act.

(b) Producing leases issued under the Act may be cancelled by the Secretary whenever the lessee fails to comply with any provision of the Act, applicable regulations or the lease only after judicial proceedings as prescribed by section 5(d) of the Act.

(c) Any lease issued under the Act, whether producing or not, shall be canceled by the authorized officer upon proof that it was obtained by fraud or misrepresentation, and after notice and opportunity to be heard has been afforded to the lessee.

(d) Pursuant to section 5(a) of the Act, the Secretary may cancel a lease when: (1) Continued activity pursuant to such lease would probably cause serious harm or damage to life, property, any mineral, national security or defense, or to the marine, coastal or human environment; (2) the threat of harm or damage will not disappear or decrease to an acceptable extent within a reasonable period of time; and (3) the advantages of cancellation outweigh the advantages of continuing such lease or permit in force. Procedures and conditions contained in 30 CFR 250.12 shall apply as appropriate.

[44 FR 38276, June 29, 1979; 44 FR 55380, Sept. 26, 1979. Redesignated at 47 FR 47006, Oct. 22, 1982]

## Subpart L—Section 6 Leases

### § 256.79 Effect of regulations on lease.

(a) All regulations in this part, insofar as they are applicable, shall supersede the provisions of any lease which is maintained under section 6(a) of the Act. However, the provisions of a lease relating to area, minerals, rentals, royalties (subject to sections 6(a)(8) and (9) of the Act), and term (subject to section 6(a)(10) of the Act and, as to sulfur, subject to section 6(b)(2) of the Act) shall continue in effect, and, in the event of any conflict or inconsistency, shall take precedence over these regulations.

(b) A lease maintained under section 6(a) of the Act shall also be subject to all operating and conservation regulations applicable to the OCS. In addition, the regulations relating to geophysical and geological exploratory operations and to pipeline rights-of-way are applicable, to the extent that those regulations are not contrary to or inconsistent with the lease provisions relating to area, the minerals, rentals, royalties and term. The lessee shall comply with any provision of the lease as validated, the subject matter of which is not covered in the regulations in this part.

[44 FR 38276, June 29, 1979; 44 FR 55380, Sept. 26, 1979. Redesignated at 47 FR 47006, Oct. 22, 1982]

### § 256.80 Leases of other minerals.

The existence of a lease that meets the requirements of section 6(a) of the Act shall not preclude the issuance of other leases of the same area for deposits of other minerals. However, no other lease of minerals shall authorize or permit the lessee thereunder unreasonably to interfere with or endanger operations under the existing lease. No sulphur leases shall be granted by the United States on any area while such area is included in a lease covering sulphur under section 6(b) of the Act.

## Subpart M—Studies

### § 256.82 Environmental studies.

(a) The Director shall conduct a study of any area or region included in any lease sale in order to establish information needed for assessment and management of impacts on the human, marine and coastal environments which may be affected by OCS oil and gas activities in such area or region. Any study shall, to the extent practicable, be designed to predict environmental impacts of pollutants introduced into the environments and of the impacts of offshore activities on the seabed and affected coastal areas.

(b) Studies shall be planned and carried out in cooperation with the affected States and interested parties and, to the extent possible, shall not duplicate studies done under other laws. Where appropriate, the Director shall, to the maximum extent practicable, enter into agreements with the National Oceanic and Atmospheric Administration in executing the environmental studies responsibilities. By agreement, the Director may also utilize services, personnel or facilities of any Federal, State or local government agency in the conduct of such study.

(c) Any study of an area or region required by paragraph (a) of this section for a lease sale shall be commenced not later than six months prior to holding a lease sale for that area. The Director may utilize information collected in any prior study. The Director may initiate studies for areas or regions not identified in the leasing program.

(d) After the leasing and developing of any area or region, the Director shall conduct such studies as are deemed necessary to establish additional information and shall monitor the human, marine and coastal environments of such area or region in a manner designed to provide information which can be compared with the results of studies conducted prior to OCS oil and gas development. This shall be done to identify any significant changes in the quality and productivity of such environments, to establish trends in the areas studies, and to design experiments identifying the causes of such changes. Findings from such studies shall be used to recommend modifications in practices which are employed to mitigate the effects of OCS activities and to enhance the data/information base for predicting impacts which might result from a single lease sale or cumulative OCS activities.

(e) Information available or collected by the studies program shall, to the extent practicable, be provided in a form and in a timeframe that can be used in the decision-making process associated with a specific leasing action or with longer term OCS minerals management responsibilities.

## Subpart N—Grants of Pipeline Rights-of-way on the Outer Continental Shelf

### § 256.83 Purpose.

(a) The purpose of these regulations is to provide the procedure for the granting and administering of rights-of-way for the transportation of minerals by pipeline through the OCS.

(b) Compliance with the regulations of this subpart does not supersede the requirements of complying with the regulations of the Department of Transportation, the Department of the Army and the Federal Energy Regulatory Commission.

### § 256.85 Policy.

The respective MMS OCS offices shall, as appropriate, engage in transportation planning in advance of receipt of an application for a right-of-way. The intergovernmental planning program or similar process shall be used to involve relevant parties in this advanced planning.

[44 FR 38276, June 29, 1979, as amended at 45 FR 77438, Nov. 24, 1980. Redesignated at 47 FR 47006, Oct. 22, 1982]

### § 256.88 Definitions.

As used in this subpart, the term "right-of-way" includes the site on which the pipeline and associated structures are situated which shall not exceed 200 feet in width for pipelines unless safety and environmental factors during construction and operations require a greater width and shall be limited to the area reasonably necessary for pumping stations or other accessory structures. It does not include gathering lines and associated structures constructed for the purpose of conveying production for gathering, storage or treating of the production from a lease or leases.

### § 256.89 Nature of grant.

(a) An applicant, by accepting a right-of-way grant, agrees and consents to comply with the requirements set out below.

(1) The holder shall comply with all existing regulations and with all existing and future regulations which the Secretary determines to be necessary and proper in order to provide for the prevention of waste, the conservation of the natural resources of the OCS and the protection of correlative rights therein. The holder shall comply with all stipulations which the authorized officer attaches to the right-of-way grant for the purpose of assuring maximum environmental protection. The holder shall utilize the best available and safest technologies, such as the safest reasonable pipeline burial techniques, which the Secretary determines to be economically feasible.

(2) The holder shall pay the United States or its lessees or right-of-way holders, as the case may be, the full value for all damages to the property of the United States or its said lessees or right-of-way holders, and shall indemnify the United States against any and all liability for damages to life, person or property arising from the occupation and use of the area covered by the right-of-way grant.

(3) The authorized officer shall be kept informed at all times of the holder's address, and, if a corporation, of the address of its principal place of business and the name and address of the officer or agent authorized to receive service of notice. In the construction, operation and maintenance of the pipeline, the holder shall not discriminate against any employee or applicant for employment because of race, creed, color, sex or national origin and shall require an identical provision in all subcontracts.

(4) The granting of the right-of-way shall be subject to the express conditions that the rights granted shall not prevent or interfere in any way with the management, administration of, or the granting, either prior or subsequent to the right-of-way grant, of other rights by the United States. Moreover, the holder agrees to allow the occupancy and use by the United States, its lessees or other rights-of-way holders of any part of the right-of-way grant not actually occupied or necessarily incident to its use for any necessary operations involved in the management, administration or the enjoyment of such other granted rights.

(5) For the first calendar year or fraction thereof, and thereafter annually, the holder shall pay the MMS, in advance, an annual rental of $15 for each statute mile or fraction thereof, traversed by the right-of-way and $75 for each area applied for as a site for an accessory to the right-of-way, including, but not limited, to a platform. Payments may be on an annual basis, for a 5-year period or for multiples of the 5-year period.

(6) Upon abandonment, relinquishment, revocation or termination of the right-of-way grant, the holder shall remove any platforms, structures, domes over valves, the pipe, taps and valves along the right-of-way which would present any hazard to navigation or fishing, unless this requirement is waived in writing by the authorized officer. In order to secure a waiver, the holder shall demonstrate to the satisfaction of the authorized officer that any abandonment in place shall not constitute an unreasonable hazard to navigation, fishing or the marine environment, and the line has been purged to remove materials that, if released, could be harmful to the marine environment. The holder shall also demonstrate to the satisfaction of the authorized officer that all open ends of the pipe have been plugged and buried to a minimum cover of three feet or such other depth as may be required by the authorized officer.

Any improvement required to be removed shall be removed by the holder within one year of the effective date of the relinquishment, revocation, termination or abandonment. All such structures, accessories thereto, or improvements not removed within the time provided herein, shall become the property of the United States but that shall not relieve the holder of liability for the cost of their removal or for restoration of the site. Any application for relinquishment of a right-of-way shall be filed in accordance with § 256.98 of this part.

(7) The holder shall suspend operations of any pipeline for a period of time specified by the authorized officer upon a determination by the authorized officer that continued operation would threaten or result in serious, irreparable, or immediate harm to life (including fish and other aquatic life), to property, to mineral deposits or the marine, coastal or human environments. The authorized officer may, to aid in the determination, request and consider the views and recommendations of appropriate Federal and State agencies. The authorized officer may also suspend operations if the holder fails to comply with applicable law, regulations or terms of the grant. The Secretary may cancel a grant under section 5(a)(2) of the Act.

(8) The holder shall operate and maintain the pipeline in such a manner so as not to pose an unreasonable obstruction to fishing and shipping operations.

(9) The holder shall furnish the authorized officer, within 30 days of request, all data as to maximum design capacity of the pipeline, average product quantity being moved as of the time of request and copies of all contracts for transportation existing at the time of request.

(10) The holder shall assure that such oil or gas pipelines shall, at the option of the Federal Energy Regulatory Commission, either transport or purchase oil or natural gas produced from submerged lands in the vicinity of the pipeline without discrimination and in such proportionate amounts as the Federal Energy Regulatory Commission, may, after a full hearing with due notice thereof to the interested parties, determine to be reasonable, taking into account, among other things, conservation and the prevention of waste.

(11) Unless otherwise exempted by the Federal Energy Regulatory Commission pursuant to section 5(f)(2) of the act, the holder shall provide open and nondiscriminatory access to the pipelines to both owner and nonowner shippers.

(12) The holder shall comply with the provisions of section 5(f)(1)(B) of the Act, under which the Federal Energy Regulatory Commission may order an expansion of the throughput capacity of a pipeline which is authorized after September 18, 1978, and which is not located in the Gulf of Mexico or the Santa Barbara Channel.

(b) Failure to comply with the Act, regulations or any conditions prescribed by the Secretary as to the right-of-way and the survey, location and width of a pipeline shall be grounds for forfeiture of the grant in an appropriate judicial proceeding instituted by the United States in any United States District Court having jurisdiction under the provisions of section 23 of the Act.

(c) Any right-of-way granted under the provisions of this subpart shall be for so long as the pipeline is properly maintained and used for the purpose for which the grant was made, unless otherwise expressly stated in the grant. Temporary cessation or suspension shall not terminate the grant. Where pipeline segments become corroded or otherwise worn and need replacement, proper maintenance may be performed under a temporary cessation of use. If the purpose of the grant ceases to exist or use of the pipeline is permanently discontinued for any reason, the grant shall be subject to forfeiture.

[44 FR 38276, June 29, 1979; 44 FR 55380, Sept. 26, 1979, as amended at 45 FR 69175, Oct. 17, 1980. Redesignated at 47 FR 47006, Oct. 22, 1982]

### § 256.91 Application procedures.

### § 256.92 Applications.

(a) No special form of application is required. The application shall be filed in triplicate in the OCS office having jurisdiction of the lands covered by the application. It shall specify that it is made pursuant to the Act and these regulations and that the applicant agrees that if the right-of-way grant is approved, the grant shall be subject to the terms and conditions of the regulations in this part. It shall also state the primary purpose for which the right-of-way is to be used. If the right-of-way has been utilized prior to the time the application is made, the application shall state the date such utilization commenced and by whom, and the date applicant obtained control of the improvement. A nonrefundable filing fee of $100 and the rental required herein under § 256.89(a)(5) of this part, shall accompany the application. A separate application shall be filed for each right-of-way.

(b) Each copy of the application shall be accompanied by a map, showing the center line of the right-of-way, properly identified so that the right-of-way can be accurately located by a competent engineer. The map shall comply with the following requirements:

(1) The scale shall be at least 1″:4,000′, or such other scale as may be determined by the authorized officer.

(2) Distances of the center line of the right-of-way and grid references for all turning points shall be given either on the margin of the map or on an attached sheet or sheets with the courses referred to the true or grid meridian, either by deflection from a line of known bearing or by independent observation and calculated distances in feet and decimals.

(3) The total distance and width of the right-of-way shall be given, and the diameter of the pipeline specified.

(4) The initial and terminal points of the right-of-way and any continuation into State jurisdiction shall be accurately located by grid references, even though the right-of-way may have an onshore terminal point.

(5) Each copy of the map shall bear upon its face a signed certificate of the engineer who made the map that the right-of-way is accurately represented upon the map, and the design characteristics are in accordance with Department of Transportation regulations.

(c) Rights-of-way issued pursuant to section 5(e) of the Act may be acquired or held only by citizens and nationals of the United States, aliens lawfully admitted for permanent residence in the United States as defined in 8 U.S.C. 1101(a)(20), private, public or municipal corporations organized under the laws of the United States, the District of Columbia, or of any State, or territory thereof, or associations of such citizens, nationals, resident aliens or private, public or municipal corporations, States or political subdivisions of States.

(d) (1) An individual applicant shall submit with the application a statement of citizenship or nationality. An applicant who is an alien lawfully admitted for permanent residence in the United States shall also submit with the application evidence of such status.

(2) If the applicant is an association (including a partnership), the application shall also be accompanied by a certified copy of the articles of association or appropriate reference to the record of the MMS in which such a copy has already been filed, with a statement as to any subsequent amendments.

(3) If the applicant is a corporation, the following additional information shall be submitted with the application:

(i) A statement certified by the secretary or assistant secretary of the corporation with the corporate seal, showing the state in which it is incorporated and the name of the person(s) authorized to act on behalf of the corporation, or

(ii) In lieu of such a statement, an appropriate reference to statements or records previously submitted to the MMS (including material submitted in compliance with prior regulations).

(e)(1) An applicant shall show the extent to which the right-of-way applied for invades or crosses mineral leases and rights-of-way granted by or pipelines permitted by the Minerals Management Service, other than mineral leases, rights-of-way, or pipelines of the applicant. The application shall contain a statement that a copy of the application has been delivered personally or by registered or certified mail to each lessee, right-of-way or pipeline permit holder whose lease, right-of-way or pipeline permit is so affected. When the statement is filed, no final action shall be taken on the right-of-way grant application until 30 days have elapsed after the date of service of such papers, in order to afford the parties concerned ample opportunity to comment on the granting of the right-of-way. A copy of the comments shall be filed with the authorized officer for his consideration.

(2) If the authorized officer determines that a change in the application as filed should be made based on the comments received, the authorized officer shall notify the applicant that an amended application shall be filed subject to changes which the authorized officer stipulates. The authorized officer shall determine whether the applicant shall deliver copies of the amended application to other parties for comment pursuant to § 256.92(e)(1) of this part.

[44 FR 38276, June 29, 1979; 44 FR 55380, Sept. 26, 1979, as amended at 45 FR 77438, Nov. 24, 1980. Redesignated and amended at 47 FR 47006, 47007, Oct. 22, 1982]

### § 256.94 Approval action.

(a) In considering the application for a right-of-way, the authorized officer shall consider the potential effect of the pipeline on the human, marine and coastal environments, life, including aquatic life, property and mineral resources in the entire area during construction and operational phases. The authorized officer shall prepare an environmental analysis in accordance with applicable policies and guidelines. To aid in the evaluation and determinations, the authorized officer may request and consider views and recommendations of appropriate Federal agencies, may hold public meetings after appropriate notice, and may consult, as appropriate, with State agencies, organizations, industries and individuals. The authorized officer shall attach, as a condition to approval, special stipulations and conditions necessary to protect human, marine and coastal environments, life, including aquatic life, property and mineral resources, located on or adjacent to the proposed right-of- way. In approving the pipeline right-of-way, consideration shall be given to any recommendation of the intergovernmental planning program, or similar process, for the assessment and management of OCS oil and gas transportation.

(b) If the right-of-way as applied for crosses any area withdrawn from disposal or restricted from oil and gas activities, it shall be rejected unless the Federal agency in charge of such withdrawn or restricted area gives its consent to the granting of the right-of-way. In such case the applicant, upon request filed within 30 days after receipt of the rejection notice, shall be allowed an opportunity to file an amended application rerouting the proposed right-of-way so as to eliminate the conflict.

(c) Should the proposed route of the right-of-way adjoin and subsequently cross any State submerged lands, the applicant shall submit to the authorized officer evidence that the State or States so affected have reviewed the application, and shall submit any comment received, including any recommendations to relocate the route, if such relocation is considered necessary. In the event of a State recommendation to relocate the proposed route, the authorized officer shall coordinate with the appropriate State officials all applications for right-of-way grants that pass from Federal to State submerged lands.

(d) If an application is for a grant for a right-of-way affecting any land or water use in the coastal zone of any State with a coastal zone management program approved under section 306 of the Coastal Zone Management Act of 1972 (16 U.S.C. 1455), then the application shall not be approved unless it is consistent with the approved coastal zone management program or until the Secretary of Commerce makes a finding that the right-of-way will be consistent with the objectives or purposes of the Coastal Zone Management Act of 1972, or is necessary in the interest of national security. However, if the application is for a grant for a right-of-way that has been described in detail in an approved development and production plan, then the application may be approved without a further finding of consistency with any approved coastal zone management program or a further finding on the part of the Secretary of Commerce. (See 30 CFR 250.34-2.)

(e) If the application and other required information are found to be in compliance with applicable law and regulations, the right-of-way may be granted. If the application is rejected, the decision shall be in writing and shall state the reasons for the decision.

### § 256.95 Construction.

(a) Failure to construct the pipeline within 5 years from the date of the grant shall be deemed to be an abandonment of the grant and deemed to be a forfeiture. Proof of construction shall be submitted to the authorized officer within 90 days after completion of construction of the pipeline. Such proof shall consist of drawings of the pipeline as built, in triplicate; a signed certificate by the engineer that the pipeline is accurately represented; grid references for all turning points on the line; and other data as required by the authorized officer. If there is substantial deviation from the right-of-way as shown on the original map, the unused portion of the grant shall be relinquished and maps, in triplicate, of the location of the right-of-way as constructed shall be furnished to the authorized officer as soon as possible after the deviation is determined to be necessary or advisable. Any deviation made prior to approval of such supplemental plat shall be at the risk of the holder.

(b) Right-of-way grants shall be reviewed annually prior to commencement of construction of any pipeline. Any significant change in conditions subsequent to the granting of a right-of-way but prior to commencement of construction may be grounds for a request to alter the grant by the authorized officer. The authorized officer shall give consideration to any recommendation of the intergovernmental planning program or similar process.

### § 256.97 Assignment of right-of-way.

(a) Assignment may be made of a right-of-way grant in whole or of any lineal segment thereof, subject to the approval of the authorized officer. Any such proposed assignment shall be filed in triplicate, accompanied by an application for approval in which the assignee shall make the showing required by § 256.92(c) of this part and agree to the terms and conditions prescribed in § 256.89(a) of this part.

(b) Any proposed assignment, in whole or in part of any right, title or interest in a right-of-way grant, shall be accompanied by the same showing of qualifications of the assignees as is required of an applicant, and shall be supported by a stipulation that the assignee agrees to comply with and to be bound by the terms and conditions of the right-of-way grant. No transfer shall be recognized unless and until it is first approved, in writing, by the authorized officer. A nonrefundable fee of $25 shall acompany the application for the approval of an assignment.

### § 256.98 Relinquishment of right-of-way.

A right-of-way grant or a portion thereof may be surrendered by the record holder by filing a written relinquishment, in triplicate, with the authorized officer. A relinquishment shall take effect on the date it is filed subject to the satisfaction of all requirements for abandonment in § 256.89(a)(6) of this part.

[44 FR 38276, June 29, 1979; 44 FR 55380, Sept. 26, 1979. Redesignated at 47 FR 47006, Oct. 22, 1982]

### § 256.100 Change of use or flow.

(a) A change may be made by the holder in the use of the pipeline or direction of flow from that specified in the approved permit only if prior approval is obtained from the Department of Transportation and the authorized officer. Application for such a change shall be filed not less than 15 working days in advance of the proposed change of use or flow.

(b) Each application shall specify whether the change is to be temporary or permanent, and any technical changes necessary to accommodate the change.

(c) Each application shall demonstrate that the pipeline is physically and technically adaptable to the proposed change without adverse environmental effects.

### § 256.101 Bonding.

(a) Prior to the issuance of a right-of-way grant the applicant shall furnish the authorized officer a corporate surety bond in the sum of $300,000 conditioned on compliance with all the terms of the grant. A similar bond shall be furnished for all previously issued rights-of-way within 90 days of the effective date of this section. Such bond shall not be required if the applicant already maintains or furnishes a bond in the sum of $300,000 conditioned on compliance with the terms of all right-of-way grants held by the applicant on the OCS for the area in which the grant to be issued is situated. This bond shall be in addition to any bond required of a lessee in Subpart I of this part.

(b) For the purposes of this section, there are four areas: (1) The Gulf of Mexico; (2) the area offshore the Pacific Coast States of California, Oregon, Washington, and Hawaii; (3) the area offshore the Coast of Alaska; and (4) the area offshore the Atlantic Coast.

(c) A separate bond shall be required for each area.

(d) If, as the result of a default, the surety on a right-of-way grant bond makes payment to the Government of any indebtedness under a grant secured by the bond, the face amount of such bond and the surety's liability shall be reduced by the amount of such payment.

(e) A new bond in the amount of $300,000 shall be posted within 6 months or such shorter period as the authorized officer may direct after a default. Failure to post a new bond shall, at the discretion of the authorized officer, be the basis of cancellation of all grants covered by the defaulted bond.

## APPENDIX A—OIL AND GAS CASH BONUS BID

The following bid is submitted for an oil and gas lease on the area of the Outer Continental Shelf specified below:

| Tract No.* | Total amount bid | Amount per acre (or per hectare) | Amount of cash submitted with bid |
|---|---|---|---|
| | | | |

*Or, if tract numbers are not used, Protraction Diagram or Leasing Map and block number.

| Bidder qualification No. | Proportionate interest of company(s) submitting bid | Name and address of bidding company |
|---|---|---|
| —— Misc. No. | | |

________________,

Authorized signatory's name and title.

[47 FR 25972, June 16, 1982. Redesignated at 47 FR 47006, Oct. 22, 1982]

## PART 259—MINERAL LEASING: DEFINITIONS

Sec.

259.001 Purpose and scope.
259.002 Definitions.

### § 259.001 Purpose and scope.

The purpose of this Part 259 is to define various terms appearing in Parts 260, 261 and 262 of this chapter.

(Pub. L. 83-212, 67 Stat. 462, 43 U.S.C. 1331 *et seq.*, as amended by Pub. L. 95-372, 92 Stat. 629)

[48 FR 1182, Jan. 11, 1983]

### § 259.002 Definitions.

For purposes of Parts 260, 261, and 262 of this chapter:

"*Area*" or "*region*" means the geographic area or region over which the MMS designated official has jurisdiction, unless the context in which those words are used indicates that a different meaning is intended.

"*Designated official*" means a representative of DOI subject to the direction and supervisory authority of the Director, MMS, and the appropriate Regional Manager of the MMS authorized and empowered to supervise and direct all oil and gas operations and to perform other duties prescribed in 30 CFR Part 250 (offshore).

"*Director*" means Director, MMS, DOI.

"*DOI*" means the Department of the Interior, including the Secretary of the Interior, or his or her delegate.

"*Federal lease*" means an agreement which, for any consideration, including, but not limited to, bonuses, rents or royalties conferred, and convenants to be observed, authorizes a person to explore for, or develop, or produce (or to do any or all of these) oil and gas, coal, oil shale, tar sands, and goethermal resources on lands or interests in lands under Federal jurisdiction.

"*Gas*" means natural gas as defined by the Federal Energy Regulatory Commission.

"*MMS*" means Minerals Management Service.

"*OCS*" means the Outer Continental Shelf, which includes all submerged lands (1) that lie seaward outside of the area of lands beneath navigable waters as defined in the Submerged Lands Act (Pub. L. 31-35, 67 Stat. 29, (43 U.S.C. 1301)) and (2) of which the subsoil and seabed appertain to the United States are subject to its jurisdiction and control.

"*OCSLA*" means the Outer Continental Shelf Lands Act, as amended (Act of August 7, 1953, Ch. 345, 67 Stat. 462, 43 U.S.C. 1331 *et seq.*, as amended by Pub. L. 95-372, 92 Stat. 629).

"*Oil*" means a mixture of hydrocarbons that exists in a liquid or gaseous phase in an underground reservoir and which remains or becomes liquid at atmospheric pressure after passing through surface separating facilities, including condensate recovered by means other than a manufacturing process.

(Pub. L. 83-212, 67 Stat. 462, 43 U.S.C. 1331 *et seq.*, as amended by Pub. L. 95-372, 92 Stat. 629)

[48 FR 1182, Jan. 11, 1983]

## PART 260—OUTER CONTINENTAL SHELF OIL AND GAS LEASING

### Subpart A—General Provisions

Sec.

260.001 Purpose and scope.
260.002 Definitions.

### Subpart B—Bidding Systems

260.101 Purpose and scope.
260.102 Definitions.
260.110 Bidding systems.
260.111 Criteria for selection of bidding systems and bidding system components.

### Subpart C—[Reserved]

### Subpart D—Joint Bidding

260.301 Purpose.
260.302 Definitions.
260.303 Joint bidding requirements.

AUTHORITY: Act of August 7, 1953, ch. 345, secs. 2 and 8, 67 Stat. 468 (43 U.S.C. 1331 and 1337), as amended by sec. 205, Pub. L. 95-372, 92 Stat. 462 and 629; secs. 302, 303 and 644.

SOURCE: 45 FR 9539, Feb. 12, 1980, unless otherwise noted. Redesignated at 48 FR 1182, Jan. 11, 1983.

EDITORIAL NOTE: Nomenclature changes to this part appear at 48 FR 1182, Jan. 11, 1983.

## Subpart A—General Provisions

### § 260.001 Purpose and scope.

The purpose of this Part 260 is to implement OCSLA, 43 U.S.C. 1331 *et seq.*, as amended by Pub. L. 95-372, 92 Stat. 629 by providing regulations which relate to the fostering of competition including, but not limited to, regulations to prohibit joint bidding for development rights by certain types of joint ventures; the implementation of alternative bidding systems; and the establishment of diligence requirements for Federal OCS leases issued under the OCSLA.

### § 260.002 Definitions.

For purposes of this Part 260:

"*OCSLA*" means the Outer Continental Shelf Lands Act (Act of August 7, 1953, ch. 345, 67 Stat. 462 (43 U.S.C. 1331 *et seq.*), as amended by Pub. L. 95-372, 92 Stat. 629).

"*OCS lease*" means a Federal lease for oil and gas issued under the OCSLA.

"*Person*" includes, in addition to a natural person, an association, a State, or a private, public, or municipal corporation.

## Subpart B—Bidding Systems

### § 260.101 Purpose and scope.

(a) This subpart establishes the several bidding systems that may be utilized in connection with the offering and sale of Federal leases for the exploration, development and production of oil and gas resources located on the OCS.

(b) Only bidding systems established by his subpart shall be utilized in OCS lease sales.

### § 260.102 Definitions.

For purposes of this Subpart B—

"*Highest responsible qualified bidder*" means a person who has met the appropriate requirements of 30 CFR 256, Subpart G and has submitted a bid higher than any other bids by qualified bidders on the same tract.

"*Highest royalty rate*" means the highest per centum rate payable to the United States, as specified in the lease, in amount or value of the production saved, removed or sold.

"*Lowest royalty rate*" means the lowest per centum rate payable to the United States, as specified in the lease, in amount or value of the production saved, removed or sold.

"*OCS lease sale*" means the DOI proceeding by which leases for certain OCS tracts are offered for sale by competitive bidding and during which bids are received, announced and recorded.

"*Production period*" means the period during which the amount of oil and gas produced from a tract, or, if the tract is unitized, the amount of oil and gas as allocated under a unitization formula, will be measured for purposes of determining the amount of royalty payable to the United States.

"*Qualified bidder*" means a person, who has met the appropriate requirements of 30 CFR 256, Subpart G.

"*Tract*" means a designation assigned solely for administrative purposes to a block or combination of blocks that are identified by a leasing map or an official protraction diagram prepared by DOI.

"*Value of production*" means the value of all oil and gas production saved, removed or sold from a tract, or, if the tract is unitized, the value of all oil and gas production saved, removed or sold and credited to the tract under a unitization formula, during a production period, which value is determined in accordance with § 260.110(b).

### § 260.110 Bidding systems.

(a) A single bidding system selected from those listed in this paragraph shall be applied to each tract included in an OCS lease sale.

(1) *Cash bonus bid with a fixed royalty rate of not less than $12\frac{1}{2}$ per centum in amount or value of the production saved, removed or sold and an annual rental.* (i) The royalty rate to be paid by the highest responsible

qualified bidder shall be a percentage of the amount or value of the production saved, removed or sold. Such royalty rate shall not be less than 12½ per centum at the beginning of the lease period in amount or value of production and shall be specified in the notice of OCS lease sale published in the FEDERAL REGISTER.

(ii) The amount of cash bonus to be paid is determined by the qualified bidder submitting the bid. Any deferment and the schedule of payments shall be included in the notice of OCS lease sale published in the FEDERAL REGISTER.

(iii) The annual rental to be paid by the highest responsible qualified bidder shall be the amount specified in the notice of OCS lease sale published in the FEDERAL REGISTER.

(2) *Royalty rate bid based on per centum in amount or value of the production saved, removed or sold, with a fixed cash bonus and an annual rental.* (i) The royalty rate to be paid is determined by the qualified bidder submitting the bid and shall be based on a percentage of the amount or value of the production saved, removed, or sold.

(ii) The cash bonus to be paid by the highest responsible qualified bidder shall be an amount specified in the notice of OCS lease sale published in the FEDERAL REGISTER.

(iii) The annual rental to be paid by the highest responsible qualified bidder shall be the amount specified in the notice of OCS lease sale published in the FEDERAL REGISTER.

(3) *Cash bonus bid with diminishing or sliding royalty rate of not less than 12½ per centum at the beginning of the lease period in amount or value of the production saved, removed, or sold, and annual rental.* (i) (A) The royalty rate to be paid by the highest responsible qualified bidder shall be a percentage of the amount or value of the production saved, removed or sold. The royalty rate shall be calculated by utilizing either a sliding scale formula, which relates the royalty rate established thereby to the adjusted value of the oil and gas produced during the production period, or a schedule that establishes the royalty rate that will be applied to specified ranges of adjusted value of production. The description of the sliding scale formula or schedule shall include the relationship between adjusted value of production and royalty rate, and a stipulation of the lowest royalty rate and highest royalty rate. The sliding scale formula or schedule shall be included in the lease issued to the person who is the successful bidder as one of the lease terms and conditions.

(B) The royalty rate shall not be less than 12½ per centum at the beginning of the lease period in amount or value of the production saved, removed or sold and shall be specified in the notice of OCS lease sale published in the FEDERAL REGISTER.

(C) *Royalty payment calculation.* (*1*) The royalty rate utilized in the calculation of royalty payments is based on an adjusted value of production, and is established through application of a sliding scale formula or a schedule to the adjusted value of production.

(*2*) The adjusted value of production shall be determined by applying an inflation factor to the actual value of production.

(*3*) The established royalty rate is applied to the actual value of production, which results in the determination of amount in dollars to be paid to the United States by the person awarded the lease or the amount of royalty oil and gas to be taken in kind by the United States.

(*4*) The production period for purposes of determining value of production shall be stated in the notice of OCS lease sale that is published in the FEDERAL REGISTER. The inflation factor utilized shall be based on the gross national product fixed weighted price index that is first published in the *Survey of Current Business* by the Bureau of Economic Analysis, U.S. Department of Commerce, for a calendar period corresponding to a production period. The procedures for making the inflation adjustment shall be stated in the notice of OCS lease sale published in the FEDERAL REGISTER.

(ii) The amount of cash bonus to be paid is determined by the qualified bidder submitting the bid. Any deferment and the schedule of payments shall be included in the notice of OCS lease sale published in the FEDERAL REGISTER.

(iii) The annual rental to be paid by the highest responsible qualified bidder shall be the amount specified in the notice of OCS lease sale published in the FEDERAL REGISTER.

(4) *Cash bonus bid with a fixed share of the net profits of no less than 30 per centum to be derived from the production of oil and gas from the lease area and a fixed annual rental*—(i) *Net profit share payment calculation.* The amount of the net profit share payment to the United States by the person awarded the lease shall be determined for each month by multiplying the net profit share base times the net profit share rate, in accordance with § 220.022.

(A) *Net profit share base.* (*1*) The net profit share base shall be calculated in accordance with § 220.021.

(*2*) The capital recovery factor needed to calculate the allowance for capital recovery, in accordance with § 220.020, shall be specified in the notice of OCS lease sale published in the FEDERAL REGISTER and may vary from tract to tract.

(B) *Net profit share rate.* The net profit share rate, which determines the fixed share of the net profits owed to the United States, shall be a percentage that is specified in the notice of OCS lease sale published in the FEDERAL REGISTER. Such net profit share rate shall not be less than 30 percent of the net profit share base and may vary from tract to tract.

(ii) The amount of cash bonus to be paid is determined by the person submitting the bid. Any deferment and the schedule of payments shall be included in the notice of OCS lease sale published in the FEDERAL REGISTER.

(iii) The annual rental to be paid by the person awarded the lease shall be the amount specified in the notice of OCS lease sale published in the FEDERAL REGISTER.

(b) The value basis for determining the actual value of production and for purposes of computing royalty in accordance with the bidding systems established by paragraph (a) of this section shall be as described in 30 CFR 206.150; *Provided, however,* That with respect to oil, the first sale of which is controlled under 10 CFR Part 212, the value shall not exceed the lawful first sale price of such oil; and *Provided further,* That with respect to gas, the value shall not exceed the sale price established by the Federal Energy Regulatory Commission.

(c) MMS may, by rule, add to or modify the bidding systems listed in paragraph (a) of this section, in accordance with the procedural requirements of OCSLA, 43 U.S.C. 1331 *et seq.*, as amended by Pub. L. 95-372, 92 Stat. 629.

[45 FR 9539, Feb. 12, 1980, as amended at 45 FR 36800, May 30, 1980; 46 FR 29689, June 2, 1981; 46 FR 35625, July 9, 1981. Redesignated at 48 FR 1182, Jan. 11, 1983, and amended at 48 FR 24874, June 3, 1983]

### § 260.111 Criteria for selection of bidding systems and bidding system components.

(a) In analyzing the application of one of the bidding systems listed in § 260.110(a) to tracts selected for any OCS lease sale, MMS may, in its discretion, consider the following purposes and policies, recognizing that each of the purposes and policies may not be specifically applicable to the selection process for a particular bidding system and tract or may present a conflict that will have to be resolved in the process of bidding system selection, and that the order of listing does not denote a ranking:

(1) Providing fair return to the Federal Government;

(2) Increasing competition;

(3) Assuring competent and safe operations;

(4) Avoiding undue speculation;

(5) Avoiding unnecessary delays in exploration, development, and production;

(6) Discovering and recovering oil and gas;

(7) Developing new oil and gas resources in an efficient and timely manner;

(8) Limiting administrative burdens on Government and industry; and

(9) Providing an opportunity to experiment with various bidding systems to enable the identification of those that are the most appropriate for the

satisfaction of the objectives of the United States in OCS lease sales.

(b) In performing the analysis referred to in paragraph (a), MMS may, in its discretion, take into account the following in relation to their impact upon the purposes and policies enumerated in paragraph (a) of this section.

(c) The bidding systems listed in § 260.110(a)(2) and (3) shall be applied to not less than 20 per centum and not more than 60 per centum of the total area offered for leasing each year during the five-year period commencing on September 18, 1978, unless DOI determines that the maximum and minimum per centum limitations set forth in this section are inconsistent with the purposes and policies of the OCSLA.

[45 FR 9539, Feb. 12, 1980. Redesignated and amended at 48 FR 1182, Jan. 11, 1983]

## Subpart C—[Reserved]

## Subpart D—Joint Bidding

SOURCE: 45 FR 62031, Sept. 18, 1980, unless otherwise noted. Redesignated at 48 FR 1182, Jan. 11, 1983.

### § 260.301 Purpose.

The purpose of the regulations in this Subpart D is to encourage participation in OCS oil and gas lease sales by limiting the requirement for filing Statements of Production to certain joint bidders.

### § 260.302 Definitions.

For purposes of this Subpart D, all the terms used shall be defined as in 30 CFR 256.38.

### § 260.303 Joint bidding requirements.

(a) Any person who submits a joint bid for any OCS oil and gas lease during a six-month bidding period and who was chargeable for the prior production period with an average daily production in excess of 1.6 million barrels of crude oil, natural gas equivalents, and liquefied petroleum products, shall have filed a Statement of Production with the Director, MMS, in accordance with the requirements of 30 CFR 256.38. The Statement of Production shall state that the person filing the Statement is chargeable for the prior production period with an average daily production in excess of 1.6 million barrels of crude oil, natural gas equivalents, and liquefied petroleum products.

(b) No person chargeable for the prior production period with an average daily production in excess of 1.6 million barrels of crude oil, natural gas equivalents, and liquefied petroleum products may submit a joint bid for any OCS oil and gas lease during the applicable six-month bidding period with any other person similarly chargeable. Such bids shall be disqualified and rejected.

(c) No person may submit any bid during the applicable six-month bidding period pursuant to any agreement, the terms of which would result in two or more persons, each chargeable for the prior production period with an average daily production in excess of 1.6 million barrels of crude oil, natural gas equivalents, and liquefied petroleum products, acquiring or holding any interest in the tract for which the bid is submitted. Such bids shall be disqualified and rejected.

# PART 265—ALASKA OCS ORDERS—[RESERVED]

# PART 266—ATLANTIC OCS ORDERS—[RESERVED]

# PART 267—GULF OF MEXICO OCS ORDERS—[RESERVED]

# PART 268—PACIFIC OCS ORDERS—[RESERVED]

# PART 270—NONDISCRIMINATION IN THE OUTER CONTINENTAL SHELF

Sec.

270.1 Purpose.
270.2 Application of this part.
270.3 Definitions.
270.4 Discrimination prohibited.
270.5 Complaint.
270.6 Process.
270.7 Remedies.

AUTHORITY: Sec. 604, Pub. L. 95-372, 92 Stat. 695 (43 U.S.C. 1863).

SOURCE: 50 FR 21048, May 22, 1985, unless otherwise noted.

### § 270.1 Purpose.

The purpose of this part is to implement the provisions of section 604 of the OSCLAA of 1978 which provides that "no person shall, on the grounds of race, creed, color, national origin, or sex, be excluded from receiving or participating in any activity, sale, or employment, conducted pursuant to the provisions of . . . the Outer Continental Shelf Lands Act."

### § 270.2 Application of this part.

This part applies to any contract or subcontract entered into by a lessee or by a contractor or subcontractor of a lessee after the effective date of these regulations to provide goods, services, facilities, or property in an amount of $10,000 or more in connection with any activity related to the exploration for or development and production of oil, gas, or other minerals or materials in the OCS under the Act.

### § 270.3 Definitions.

As used in this part, the following terms shall have the meanings given below:

"*Contract*" means any business agreement or arrangement (in which the parties do not stand in the relationship of employer and employee) between a lessee and any person which creates an obligation to provide goods, services, facilities, or property.

"*Lessee*" means the party authorized by a lease, grant of right-of-way, or an approved assignment thereof to explore, develop, produce, or transport oil, gas, or other minerals or materials in the OCS pursuant to the Act and this part.

"*Person*" means a person or company, including but not limited to, a corporation, partnership, association, joint stock venture, trust, mutual fund, or any receiver, trustee in bankruptcy, or other official acting in a similar capacity for such company.

"*Subcontract*" means any business agreement or arrangement (in which the parties do not stand in the relationship of employer and employee) between a lessee's contractor and any person other than a lessee that is in any way related to the performance of any one or more contracts.

### § 270.4 Discrimination prohibited.

No contract or subcontract to which this part applies shall be denied to or withheld from any person on the grounds of race, creed, color, national origin, or sex.

### § 270.5 Complaint.

(a) Whenever any person believes that he or she has been denied a contract or subcontract to which this part applies on the grounds of race, creed, color, national origin, or sex, such person may complain of such denial or withholding to the Regional Director of the OCS Region in which such action is alleged to have occurred. Any complaint filed under this part must be submitted in writing to the appropriate Regional Director not later than 180 days after the date of the alleged unlawful denial of a contract or subcontract which is the basis of the complaint.

(b) The complaint referred to in paragraph (a) of this section shall be accompanied by such evidence as may be available to a person and which is relevant to the complaint including affidavits and other documents.

(c) Whenever any person files a complaint under this part, the Regional Director with whom such complaint is filed shall give written notice of such filing to all persons cited in the complaint no later than 10 days after receipt of such complaint. Such notice shall include a statement describing the alleged incident of discrimination, including the date and the names of persons involved in it.

### § 270.6 Process.

Whenever a Regional Director determines on the basis of any information, including that which may be obtained under § 270.5 of this title, that a violation of or failure to comply with any provision of this subpart probably occurred, the Regional director shall undertake to afford the complainant and the person(s) alleged to have violated the provisions of this part an opportunity to engage in informal consultations, meetings, or any other form of communications for the purpose of resolving the complaint. In the event such communications or consultations result in a mutually satisfactory resolution of the complaint, the complainant and all persons cited in the complaint shall notify the Regional Director in writing of their agreement to such resolution. If either the complainant or the person(s) alleged to have wrongfully discriminated fail to provide such written notice within a reasonable period of time, the Regional Director shall proceed in accordance with the provisions of §§ 250.70, 250.71, 250.72, and 250.80 of this title.

### § 270.7 Remedies.

In addition to the penalties available under §§ 250.81-1 and 250.80-2 of this title, the Director may invoke any other remedies available to him or her under the Act or regulations for the lessee's failure to comply with provisions of the Act, regulations, or lease.

# SUBCHAPTER C—APPEALS

## PART 290—APPEALS PROCEDURES

Sec.

290.1 Scope.
290.2 Who may appeal.
290.3 Appeals to Director.
290.4 Oral argument.
290.5 Time limitations.
290.6 Appeals to the Commission of Indian Affairs.
290.7 Appeals to the Board of Land Appeals.

AUTHORITY: R.S. 463, 25 U.S.C. 2; R.S. 465, 25 U.S.C. 9; sec. 32, 41 Stat 450, 30 U.S.C. 189; sec. 5, 44 Stat. 1058, 30 U.S.C. 285; sec. 10, 61 Stat. 915, 30 U.S.C. 359; sec. 5, 6, 67 Stat. 464, 465, 43 U.S.C. 1334, 1335; sec. 24, 84 Stat. 1573, 30 U.S.C. 1023.

SOURCE: 38 FR 10001, Apr. 23, 1973, unless otherwise noted.

EDITORIAL NOTE: Nomenclature changes to this part appear at 47 FR 28370, June 30, 1982.

### § 290.1 Scope.

The rules and procedures set forth herein apply to appeals to the Director, Minerals Management Service (and the Commissioner of Indian Affairs when Indian lands are involved) from final orders or decisions of officers of the Minerals Management Service, issued under authority of the regulations in chapter II of this title, 43 CFR Part 23, 43 CFR Subtitle B, Chapter II, and 25 CFR Part 177. This part also provides for the further right of appeal to the Board of Land Appeals in the Office of Hearings and Appeals, Office of the Secretary, from adverse decisions of the Director (and the Commissioner of Indian Affairs when Indian lands are involved) rendered under this part.

[38 FR 10001, Apr. 23, 1973, as amended at 47 FR 28370, June 30, 1982]

### § 290.2 Who may appeal.

Any party to a case adversely affected by a final order or decision of an officer of the Minerals Management Service shall have a right to appeal to the Director, Minerals Management Service, unless the decision was approved by the Secretary or the Director prior to promulgation.

[38 FR 10001, Apr. 23, 1973, as amended at 47 FR 28370, June 30, 1982]

### § 290.3 Appeals to Director.

(a) An appeal to the Director, Minerals Management Service, may be taken by filing a notice of appeal in the office of the official issuing the order or decision within 30 days from service of the order or decision. The notice of appeal shall incorporate or be accompanied by such written showing and argument on the facts and laws as the appellant may deem adequate to justify reversal or modification of the order or decision. Within the same 30-day period, the appellant will be permitted to file in the office of the official issuing the order or decision additional statements of reasons and written arguments or briefs.

(b) The officer with whom the appeal is filed shall transmit the appeal and accompanying papers to the Director, Minerals Management Service, with a full report and his recommendation on the appeal.

(c) The Director will review the record and render a decision in the case.

### § 290.4 Oral argument.

Oral argument in any case pending before the Director, Minerals Management Service, will be allowed on motion in the discretion of such officer and at a time to be fixed by him.

### § 290.5 Time limitations.

With the exception of the time fixed for filing a notice of appeal, the time for filing any document in connection with an appeal may be extended by the Director, Minerals Management Service. A request for an extension of time must be filed within the time allowed for filing of the document and must be filed in the same office in which the document in connection with which the extension is requested must be filed.

### § 290.6 Appeals to the Commissioner of Indian Affairs.

The procedure for appeals under this part shall be followed for permits and leases on Indian land except that with respect to such permits and leases, the Commissioner of Indian Affairs will exercise the functions vested in the Director, Minerals Management Service.

### § 290.7 Appeals to the Board of Land Appeals.

Any party to a case adversely affected by a final decision of the Director, Minerals Management Service, or the Commissioner of Indian Affairs under this part shall have a right of appeal to the Board of Land Appeals in the Office of Hearings and Appeals, Office of the Secretary, in accordance with the procedures provided in 43 CFR Part 4, "Department Hearings and Appeals Procedures."

# CHAPTER III—BOARD OF SURFACE MINING AND RECLAMATION APPEALS, DEPARTMENT OF THE INTERIOR

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*Part* *Page*

301 Procedures under Svrface Mining Control and Reclamation Act of 1977 .......... 186

73–[illegible] O–86——7

## PART 301—PROCEDURES UNDER SURFACE MINING CONTROL AND RECLAMATION ACT OF 1977

### § 301.1 Cross reference.

For special rules applicable to hearings, appeals, and other review procedures relating to surface mining control and reclamation within the jurisdiction of administrative law judges and the Interior Board of Surface Mining and Reclamation Appeals, Office of Hearings and Appeals, see Subpart L of Part 4 of Subtitle A—Office of the Secretary of the Interior, of Title 43 of the Code of Federal Regulations. Subpart A of Part 4 and all of the general rules in Subpart B of Part 4 not inconsistent with the special rules in Subpart L of Part 4 are also applicable to such hearings, appeals and other review proceedings.

(Sec. 201, Pub. L. 95-87, 91 Stat. 445, 30 U.S.C. 1201 et seq.)

[43 FR 41974, Sept. 19, 1978]

# CHAPTER IV—GEOLOGICAL SURVEY, DEPARTMENT OF THE INTERIOR

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| *Part* | | *Page* |
|---|---|---|
| 400 | Regulations for obtaining Federal assistance in financing explorations for mineral reserves, excluding organic fuels, in the United States, its territories and possessions | 188 |
| 401 | State Water Research Institute program | 192 |
| 402 | Water-Resources Research program and the Water-Resources Technology Development program (effective October 1, 1986) | 197 |

# PART 400—REGULATIONS FOR OBTAINING FEDERAL ASSISTANCE IN FINANCING EXPLORATIONS FOR MINERAL RESERVES, EXCLUDING ORGANIC FUELS, IN THE UNITED STATES, ITS TERRITORIES AND POSSESSIONS

GENERAL PROVISIONS

Sec.
400.1 Purpose.
400.2 Definitions.
400.3 Eligible minerals or mineral products.
400.4 Operator's property rights.

APPLICATIONS

400.5 Form and filing.
400.6 Information required.
400.7 Criteria.
400.8 Approval.

EXPLORATION CONTRACTS

400.9 Government participation.
400.10 Allowable costs.
400.11 Repayment by the operator.
400.12 Interest on amount of Government participation.
400.13 Limitation on the amount of Government participation.
400.14 Government not obligated to buy.
400.15 Title to and disposition of property.

AUTHORITY: Sec. 2(e), 72 Stat. 700 (30 U.S.C. 642(e)).

SOURCE: 30 FR 2866, Mar. 5, 1965, unless otherwise noted. Redesignated at 47 FR 28369, June 30, 1982.

## GENERAL PROVISIONS

### § 400.1 Purpose.

The regulations in this part govern the obtaining of Federal financial assistance in conducting exploration for mineral reserves, excluding organic fuels, in the United States, its territories or possessions.

### § 400.2 Definitions.

As used in this part:

(a) "Exploration" means the search, including related development work, for new or unexplored mineral deposits within a specified area or parcel of ground where geologic conditions favor their occurrence. Exploration using recognized and sound procedures, including standard geophysical and geochemical methods, may be conducted from the surface or underground to obtain information. The work shall not go beyond a reasonable delineation and sampling of a mineral deposit, and shall not be conducted primarily for mining or preparation for mining.

(b) "Operator" means an individual partnership, corporation, or other legal entity that is party to an exploration contract with the Government.

(c) "Secretary" means the Secretary of the Interior, or his authorized representative.

(d) "Government" and "Federal" means the United States of America.

(e) "Commercial sources" means banking institutions or other private sources of credit.

### § 400.3 Eligible minerals or mineral products.

(a) The following are eligible for Government financial assistance of 50 percent of the allowable costs of exploration:

Asbestos, Bauxite, Beryllium, Cadmium, Chromite, Cobalt, Columbium, Copper, Corundum, Diamond (industrial), Fluorspar, Graphite (crucible flake), Iron Ore, Kyanite (strategic), Manganese, Mica (strategic), Molybdenum, Monazite, Nickel, Quartz Crystal (piezoelectric), Rare Earths, Selenium, Sulphur, Talc (block steatite), Tellurium, Thorium, Uranium.

(b) The following are eligible for Government financial assistance of 75 percent of the allowable costs of exploration:

Antimony, Bismuth, Gold, Mercury, Platinum Group Metals, Rutile, Silver, Tantalum, Tin.

(c) Combination of the minerals or mineral products named in paragraphs (a) and (b) of this section may be eligible for Government financial assistance of 62.5 percent of the allowable costs of exploration.

[32 FR 12941, Sept. 12, 1967]

### § 400.4 Operator's property rights.

The operator must have and preserve the right to possession of the land (as owner, lessee, or otherwise) for a term at least sufficient to complete the exploration work. (See § 400.11(f) regarding repayment.) The operator shall devote the land and all existing improvements, facilities, buildings installations, and appurtenances necessary to the purposes of the exploration.

## APPLICATIONS

### § 400.5 Form and filing.

An application for Federal financial assistance must be submitted in quadruplicate on forms which may be obtained from and filed with either:

Geological Survey,
Department of the Interior.
Washington, D.C. 20242

or Field Officers, Geological Survey.

The regions which they serve and their Post Office addresses are as follows:

Region I: Alaska, Idaho, Montana, Oregon, and Washington—Geological Survey, South 157 Howard Street, Spokane, Washington 99204. Applicants for Alaska projects may file applications with the United States Bureau of Mines, P.O. Box 2688, Juneau, Alaska, for forwarding to the Field Officer, Region I.

Region II: California, Hawaii, and Nevada—Geological Survey, 113 Custom House, 555 Battery Street, San Francisco California 94111.

Region III: Arizona, Colorado, Kansas, Nebraska, New Mexico, North Dakota, Oklahoma, South Dakota, Texas, Utah, and Wyoming—Geological Survey, Federal Center, Denver, Colorado 80202.

Region IV: Alabama, Arkansas, Connecticut, Delaware, Florida, Georgia, Illinois, Indiana, Iowa, Kentucky, Louisiana, Maine, Maryland, Massachusetts, Michigan, Minnesota, Mississippi, Missouri, New Hampshire, New Jersey, New York, North Carolina, Ohio, Pennsylvania, Rhode Island, South Carolina, Tennessee, Vermont, Virginia, West Virginia, and Wisconsin—Geological Survey Room 11, Post Office Building, Knoxville, Tennessee 37902.

### § 400.6 Information required.

(a) Each application shall fully describe the proposed exploration, and shall include all detailed data called for by the application form. The Secretary may require the filing of additional information, including financial statements, reports, maps, or charts, and exhibits and such physical on-site examination as he deems necessary.

(b) The application must include evidence that funds for the exploration work are unavailable on reasonable terms from commercial sources. The evidence shall include information as to the commercial sources to which applications were made, the amounts requested, and the reasons why loans were not obtained.

(c) The application must include a certification by the applicant that he would not normally undertake the exploration at his sole expense under current conditions or circumstances.

### § 400.7 Criteria.

The following factors will be considered and weighed in passing upon applications:

(a) The geologic probability of a significant discovery being made.

(b) The estimated cost of the exploration in relation to the size and grade of the potential deposit.

(c) The plan and method of conducting the exploration.

(d) The accessibility of the project area.

(e) The background and operating experience of the applicant.

(f) The applicant's title or right to possession of the property.

### § 400.8 Approval.

If the application is approved, the Government may enter into an exploration contract with the applicant upon terms and conditions which the Secretary deems necessary and appropriate as set forth in the contract form furnished by the Government.

## EXPLORATION CONTRACTS

### § 400.9 Government participation.

The Government will contribute not more than the percent of the total allowable costs of exploration which is specified in each exploration project contract. The percent specified in each contract will depend upon the minerals or mineral products sought and the Government contribution provided by § 400.3 at the time the contract is made.

[32 FR 12941, Sept. 12, 1967]

### § 400.10 Allowable costs.

(a) The Government, to the extent provided in the exploration contract, will contribute to:

(1) The necessary, reasonable, and direct actual costs of performing the exploration, including the costs of: Labor, supervision, and outside consultants; operating materials, supplies, and equipment; initial rehabilitation or repair of existing buildings, installations, fixtures, and operating equipment; construction of buildings, fixed improvements, and installations; repairs and maintenance of operating equipment; analytical work, accounting, payroll and sales taxes and employers' liability or employees' compensation insurance; payments by the operator to independent contractors; and such other necessary, reasonable, and direct actual costs as may be approved by the Government in the course of work; and

(2) The fixed unit costs agreed upon by the operator and the Government in terms of units of work to be performed (per foot of drifting, per foot of drilling, etc.) in lieu of actual costs.

(b) The Government will not contribute to costs incurred before the date of the contract, or to costs of or incident to:

(1) Acquiring, owning or possessing land with any existing improvements, facilities, buildings, installations, and appurtenances, or the depreciation and depletion thereof;

(2) General overhead, corporate management, interest and taxes (other than payroll and sales taxes);

(3) Insurance (other than employers' liability or employees' compensation insurance); and

(4) Damages to persons or property (other than authorized repair to or replacement of equipment or other property used in the work).

## § 400.11 Repayment by the operator.

(a) If the Secretary considers that as a result of the exploration, mineral or metal production from the area covered by the contract may be possible, he shall so certify in writing to the operator within the time specified in the contract.

(b) When the Secretary determines not to certify, he shall promptly so notify the operator provided the operator has completed all obligations under the contract.

(c) The operator shall pay the Government a royalty on all minerals or metals produced from the land described in the contract and any other royalty as may be provided therein:

(1) Irrespective of any certification of possible production—from the date of the contract to the date of notice that certification will not be made, or until the total amount contributed by the Government with interest is fully repaid, whichever occurs first; or

(2) Irrespective of any certification of possible production—if the Secretary, deeming it necessary and in the public interest, enters into an agreement to provide for royalty payments.

(3) If a certification of possible production is issued—for a period of ten years (or other period fixed by the contract not exceeding 25 years) from the date of the contract, or until the total amount contributed by the Government, with interest, is fully repaid, whichever occurs first.

(d) The Government's royalty shall be 5 percent of the "gross proceeds" (including any bonuses, premiums, allowances, or other benefits) from the production sold, in the form sold (ore, concentrates, metal, or equivalent) at the point of delivery (the f.o.b. point) except, that charges of the buyer (not the operator or producer) arising in the regular course of his business, and shown on the buyer's settlement sheets as deductions (such as treatment processes performed by the buyer, sampling and assaying to determine the value of the production sold, and freight payable by the buyer to a carrier (not the operator or producer) shall be allowed as deductions in arriving at the "gross proceeds" as that term is used in this section. No costs of the operator or producer are deductible in arriving at the "gross proceeds" as that term is used in this section. The term "treatment processes", as used in this paragraph means those processes (such as milling, concentrating, smelting, refining, or equivalent) applied to the crude ore or other production after it is extracted from the ground to put it into a commercially marketable form, excluding fabricating or manufacturing.

(e) If any production (ore, concentrate, metal, or equivalent) remains unsold or is not used by the operator or producer in integrated manufacturing or fabricating operations (for instance, if it is stockpiled) after the lapse of six months from the date it is extracted from the ground, the Government, at its option, may require the computation and payment of its royalty on the value of such production in the form (ore, concentrate, metal, or equivalent) it is in at the time the Government elects to exercise its option. If any production is used by the operator or producer in integrated manufacturing or fabricating operations, the Government's royalty on such production shall be computed on the "value" thereof in the form in which and at the time when it is used. "Value" as used in this section means what is or would be gross income from mining operations for percentage depletion purposes in Federal income tax determination, or the market value, whichever is greater.

(f)(1) To secure the payment of the Government's royalty, the contract shall provide for a lien upon the operator's interest in the land, upon any production from the land, and upon any interests in the land other than the operator's interest. However, the Secretary may accept the undertaking of a surety company or third person in lieu of a lien upon interests in the land other than the operator's interest. In circumstances where the Secretary deems it to be in the public interest, the requirement for a lien or other undertaking concerning interests in land, other than the lien upon the operator's interest, may be omitted from the Contract.

(2) If the operator is not the producer (for example, if the operator transfers or does not retain his interest in production or in the land), the operator shall remain liable for the payment of the Government's royalty.

(g) If, in any particular case, the Secretary finds that it would be more economical or practicable to compute the Government's royalty upon some basis other than "gross proceeds" or "value", as these terms are used in this section, or upon the production in some form other than that in which it is sold, held, or used in integrated operations, he may agree with the operator, either in the original exploration contract or by an amendment thereof, upon some other basis of computation.

(h) Nothing in this part shall be construed as imposing any obligation on the operator to engage in any mining or production operations.

(i) The Secretary may modify and adjust the terms and conditions of any contract to reduce the amount and terms of any royalty payment when he shall determine that such action is necessary and in the public interest.

### § 400.12 Interest on amount of Government participation.

(a) Simple interest is calculated from the first day of the month following the dates Federal funds are made available until the period specified for royalty payments expires or until the amount of Federal funds contributed, including interest, is fully repaid, whichever occurs first.

(b) The rate of interest shall be fixed by the Secretary at not less than the rate the Department of the Interior would be required to pay if it borrowed from the Treasury, plus a two percent interest charge in lieu of the actual cost to the Government of administering the contract.

(c) Paragraphs (a) and (b) of this section shall not be construed to increase the rate of royalty or to extend the period for which the royalty is payable as set forth in § 400.11.

### § 400.13 Limitation on the amount of Government participation.

No single contract shall authorize Government participation in excess of $250,000.

### § 400.14 Government not obligated to buy.

Nothing in this part or in any contract entered into pursuant to this part shall be construed as imposing any obligation on the Government to purchase any materials mined or produced from the land which is the subject of such contract.

### § 400.15 Title to and disposition of property.

Facilities, buildings, fixtures, equipment, or other items or groups of items (such as pipe, rail, steel, etc.),

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costing more than $50.00 each, paid for or purchased with funds contributed jointly by the operator and the Government, although title may be taken in the name of the operator, shall belong to the operator and the Government jointly, in proportion to their respective contributions to the extent set forth in the contract. The exploration contract shall make suitable provisions also for their disposal for the joint account of the operator and the Government.

# PART 401—STATE WATER RESEARCH INSTITUTE PROGRAM

**Subpart A—General**

Sec.
401.1 Purpose.
401.2 Delegation of authority.
401.3 Definitions.
401.4 Information collection.
401.5 [Reserved]

**Subpart B—Designation of Institutes; Institute Programs**

401.6 Designation of institutes.
401.7 Programs of institutes.
401.8-401.10 [Reserved]

**Subpart C—Application and Management Procedures**

401.11 Applications for grants.
401.12 Program management.
401.13-401.18 [Reserved]

**Subpart D—Reporting**

401.19 Reporting procedures.
401.20-401.25 [Reserved]

**Subpart E—Evaluation**

401.26 Evaluation of institutes.

AUTHORITY: Sec. 104, Pub. L. 98-242, 98 Stat. 97 (42 U.S.C. 10303).

SOURCE: 50 FR 23114, May 31, 1985, unless otherwise noted.

## Subpart A—General

### § 401.1 Purpose.

The regulations in this part are issued pursuant to Title I of the Water Research Act of 1984 (Pub. L. 98-242, 98 Stat. 97) which authorizes appropriations to, and confers authority upon, the Secretary of the Interior to promote a national program of water-resources research.

### § 401.2 Delegation of authority.

The State Water Research Institute Program, as authorized by section 104 of the Act, has been established as a component of the U.S. Geological Survey (USGS). Secretary of the Interior has delegated to the Director of the USGS authority to take the actions and make the determinations that, under the Act, are the responsibility of the Secretary.

### § 401.3 Definitions.

"*Act*" means the Water Resources Research Act of 1984 (Pub. L. 98-242, 98 Stat. 97).

"*Fiscal year*" means a 12-month period ending on September 30.

"*Director*" means the Director of the USGS or a designee.

"*Grant*" means the funds made available to an institute in a particular fiscal year pursuant to section 104 of the Act and the regulations in this chapter.

"*Grantee*" means the college or university at which an institute is established.

"*Granting agency*" means the USGS.

"*Institute*" means a water resources research institute, center, or equivalent agency established in accordance with Title I of the Act.

"*Region*" means any grouping of two or more institutes mutually chosen by themselves to reflect a commonality of water-resources problems.

"*Scientists*" means individuals engaged in any professional discipline, including the life, physical or social sciences, and engineers.

"*Secretary*" means the Secretary of the Interior or a designee.

"*State*" means each of the 50 States, the Commonwealth of Puerto Rico, the Virgin Islands, the District of Columbia, Guam, American Samoa, the Commonwealth of the Mariana Islands, and the Trust Territory of the Pacific Islands.

### § 401.4 Information collection.

The information collection requirements contained in §§ 401.11 and

401.19 have been approved by the Office of Management and Budget under 44 U.S.C. 3501 *et. seq.* and assigned clearance number 1028-0044. They have been approved for use through February 29, 1988. The information is being collected to provide information on eligibility for grants and to provide performance reports on accomplishments achieved through use of such funds. The information will be used to determine compliance with the objectives and criteria of the grant program. Response is required to obtain a benefit.

**§ 401.5 [Reserved]**

## Subpart B—Designation of Institutes; Institute Programs

### § 401.6 Designation of institutes.

(a) As a condition of recognition as an established institute under the provisions of this Chapter, each institute shall provide to the Director written evidence that it conforms to the requirements of subsection 104(a) of the Act, in that:

(1) The institute is established at the college or university in the State that was established in accordance with the Act of July 21, 1862 (12 Stat. 503; 7 U.S.C. 301ff), *i.e.*, a "land-grant" institution, or;

(2) If established at some other institution, the institute is at a college or university that has been designated by act of the legislature for the purposes of the Act, or;

(3) If there is more than one "land-grant" institution in the State, and no designation has been made according to paragraph (a)(2) of this section, the institute has been established at the one such institution designated by the Governor of the State to participate in the program, or;

(4) The institute has been designated as an interstate or regional institute by two or more cooperating States as provided in the Act.

(b) The certification of designation made pursuant to paragraph (a) of this section shall originate following the issuance of these regulations, be signed by the highest ranking officer of the college or university at which the institute is established and be submitted to the Director within 90 days of the effective date of these regulations. It shall be accompanied either by the evidence of establishment under the provisions of 30 CFR Part 401 or by new evidence of establishment made pursuant to these regulations.

(c) Any institute not previously established under the provisions of the Water Resources Act of 1964 (Pub. L. 88-379, 78 Stat. 331) or the Water Research and Development Act of 1978 (Pub. L. 95-467, 92 Stat. 1305) shall also, in addition to the annual program application specified in § 401.11 of this chapter, submit to the Director the following information:

(1) Evidence of the appointment by the governing authority of the college or university of an officer to receive and account for all funds paid under the provisions of the Act and to make annual reports to the granting agency on work accomplished; and

(2) Evidence satisfactory to the Director that it has the capability of conducting an effective interdisciplinary water research program and of promoting the application of the results of that research.

### § 401.7 Programs of institutes.

(a) Release of grant funds to participating institutes is conditioned on the ability of each receiving institute to plan, conduct, or otherwise arrange for:

(1) Competent research, investigations, and experiments of either a basic or practical nature, or both, in relation to water resources;

(2) Promotion of the dissemination and application of the results of these efforts; and

(3) Assistance in the training of scientists in relevant fields of endeavor to water resources through the research, investigations, and experiments.

(b) Such research, investigations, experiments and training may include:

(1) Aspects of the hydrologic cycle;

(2) Supply and demand;

(3) Demineralization of saline and other impaired waters;

(4) Conservation and best use of available supplies of water and methods of increasing such supplies;

(5) Water reuse;

(6) Depletion and degradation of ground-water supplies;

(7) Improvements in the productivity of water when used for agricultural, municipal, and commercial purposes;

(8) The economic, legal, engineering, social, recreational, biological, geographical, ecological, or other aspects of water problems;

(9) Scientific information dissemination activities, including identifying, assembling, and interpreting the results of scientific research on water resources problems, and ;

(10) Providing means for improved communication of research results, having due regard for the varying conditions and needs of the respective States and regions.

(c) An institute shall cooperate closely with other colleges and universities in the State that have demonstrated capabilities for research, information dissemination and graduate training in the development of its program. For purposes of financial management, reporting and other research program management and administration activities, the institutes shall be responsible for performance of the activities of other participating institutions.

(d) Each institute shall cooperate closely with other institutes and other research organizations in the region to increase the effectiveness of the institutes, to coordinate their activities, and to avoid undue duplication of effort.

**§§ 401.8—401.10 [Reserved]**

## Subpart C—Application and Management Procedures

### § 401.11 Applications for grants.

(a) Subject to the availability of appropriated funds, but not to exceed a total of $10 million, an equal amount of dollars will be available to each qualified institute in each fiscal year to assist it in carrying out the purposes of the Act. If the full amount of the available grant funds for any fiscal year has not been requested as of the closing date for receipt of applications, the remaining funds shall be made available to the institutes for amended applications containing additional projects of high priority concern. Selection and approval of such projects shall be based on criteria to be determined by the Director. Announcement of such criteria shall be made by notice in the FEDERAL REGISTER. Any funds which fail to be obligated by the close of the fiscal year for which they were appropriated shall be transferred by the Secretary for use during the succeeding fiscal year under the terms of section 106 of the Act. The granting agency may retain an amount up to 15 percent of the total appropriation for administrative costs.

(b) The granting agency will annually make available to qualified institutes instructions for the submittal of applications for grants. The instructions will include information pertinent only to a single fiscal year, such as the closing date for applications and the amount of funds initially available to each institute. They also will include notification of the provisions and assurances necessary to ensure that administration of the grant will be conducted in compliance with this chapter and other Federal laws and regulations applicable to grants to institutions of higher learning.

(c) In making its application for funds to which it is entitled under the Act, each institute shall use and follow the standard form for Federal assistance (SF 424, Federal Assistance). No preapplication is required. The institute shall include in Section IV of Standard Form 424 evidence that its application was:

(1) Developed in close consultation and collaboration with senior personnel of the State's department of water resources or similar agencies, other leading water resources officials within the State, and interested members of the public;

(2) Coordinated with other institutes in the region for the purposes of avoiding duplication of effort and encouraging regional cooperation in research areas of water management, development, and conservation that have a regional or national character; and

(3) Reviewed for technical merit of its research components by qualified scientists.

(d) Each application shall further include:

(1) A financial plan relating expenditures to scheduled activity and rate of effort to be expended and indicating the times at which there will be need for specified amounts of Federal funds; and

(2) A description of the institute's arrangements for development, administration, and technical oversight of the research program.

(e) Each annual program application is to include separately identifiable proposals for conduct of research to meet the needs of the State and region. Such proposals must set forth for each project:

(1) The nature, scope and objectives of the project to be undertaken;

(2) Its importance to the State, region, or Nation; its relation to other known research projects already completed or in progress; and the anticipated applicability of the research results;

(3) The period during which it will be pursued;

(4) The names and qualifications of the senior professional personnel who will direct and conduct the project;

(5) Its estimated costs, with a breakdown of the costs per year; and

(6) The extent of which it will provide opportunity for the training of scientists.

(f) Each program application shall contain a plan for disseminating information on the results of research and promoting their application. Plans which require the use of grant funds shall contain:

(1) Definition of the topics for dissemination;

(2) Identification of the target audiences for dissemination;

(3) Strategies for accomplishing the dissemination;

(4) Duties and qualifications of the personnel to be involved;

(5) Estimated costs of each identifiable element of the plan; and

(6) Identification of cooperating entities.

(g) The application shall provide assurance that non-Federal dollars will be available to share the costs of the proposed program. The Federal funds are to be matched on a basis of no less than one non-Federal dollar for every Federal dollar during the fiscal years ending September 30, 1985, and September 30, 1986; one and one-half non-Federal dollars for every Federal dollar during the fiscal years ending September 30, 1987, and September 30, 1988; and two non-Federal dollars for each Federal dollar during the fiscal year ending September 30, 1989.

(h) The granting agency will evaluate the proposals for consistency with the provisions of its instructions and this chapter and within no more than 90 days request any revisions and additions necessary for such consistency.

### § 401.12 Program management.

(a) Upon approval of each fiscal year's proposed program, the granting agency will transmit to the grantee an award which will incorporate the application and assurances.

(b) The grant is effective and constitutes an obligation of Federal funds in the amount and for the purpose stated in the award document at the time of the Director's signature.

(c) Acceptance of the award document certifies the grantee's assurance that the grant will be administered in compliance with the regulations, policies, guidelines, and requirements of the following OMB circulars, copies of which shall be available from the granting agency:

(1) No. A-21, revised, "Cost Principles for Educational Institutions;"

(2) No. A-67, "Coordination of Federal Activities in the Acquisition of Certain Water Data;"

(3) No. A-88, revised, "Indirect Cost Rates, Audit and Audit Followup at Educational Institutions;"

(4) No. A-110, "Uniform Administrative Requirements for Grants and Agreements with Institutions of Higher Education, Hospitals and other Nonprofit Organizations;" and

(5) No. A-124, "Patents—Small Business Firms and Nonprofit Organizations."

§§ 401.13—401.18 [Reserved]

## Subpart D—Reporting

### § 401.19 Reporting procedures.

(a) The institutes are encouraged to publish, as technical reports or in the professional literature, the findings, results, and conclusions relating to separately identifiable research projects undertaken pursuant to the Act.

(b) Each institute shall submit to the granting agency, by a date to be specified in the award document, an annual program report which provides:

(1) A statement concerning the relationship of the institute's program to the water problems and issues of the State;

(2) A synopsis of the objectives, methods, and conclusions of each project completed within the period covered;

(3) A progress report on each project continuing into the subsequent fiscal year;

(4) Citations of all reports, papers, publications or other communicable products resulting from each project completed or in progress;

(5) A description of all activities undertaken for the purpose of promoting the application of research results;

(6) A description of cooperative arrangements with other educational institutions, State agencies, and others.

(c) One manuscript of reproducible quality and two copies of the annual program report shall be furnished to the granting agency. One copy of a complete report on the objectives, methods, and conclusions of each research project shall be maintained by the institute and open to inspection.

(d) Appropriate acknowledgment shall be given by institutes to the granting agency's participation in financing activities carried out under provisions of the Act. Such acknowledgment shall be included in all reports, publications, news releases, and other information media developed by institutes and others to publicize, describe, or report upon accomplishments and activities of the program.

(e) An original and two copies of the final "Financial Status Report," SF 269, shall be furnished to the granting agency within 90 days of completion of the grant period.

§§ 401.20—401.25 [Reserved]

## Subpart E—Evaluation

### § 401.26 Evaluation of institutes.

(a) Within 2 years of the date of its certification according to the provisions of § 401.6, each institute will be evaluated for the purpose of determining whether the national interest warrants its continued support under the provisions of the Act. That determination shall be based on:

(1) The quality and relevance of its water research as funded under the Act;

(2) Its effectiveness as a statewide institution for planning, conducting, or arranging research, including that supported by sources other than the Act;

(3) Its demonstrated performance in making research results available to users in the State and elsewhere; and

(4) Its demonstrated record in providing for the training of scientists through student involvement in its research program.

(b) An evaluation team, selected by the granting agency on the basis of the members' knowledge of water research and administration, shall visit each institute. Each team is to include at least one individual from the following categories:

(1) Employees of the Department of the Interior;

(2) University faculty or administrators with relevant experience in the conduct or administration of water resources research;

(3) Directors of water research institutes from States other than the one being evaluated;

(4) State or local water-resources agency personnel from the State of the institute being evaluated; and

(5) Private citizens who are familiar with water problems and issues of the State.

(c) The granting agency may request recommendations for team selections from the National Research Council/National Academy of Sciences and from other organizations whose members include the types of individuals cited in paragraph (b) of this section.

(d) The granting agency shall, as an administrative cost, provide the funds for travel and per diem expenses of team members, within the maximum limits allowable under Federal travel regulations.

(e) The granting agency has the right to select dates for the evaluation visits, and notice of the team's visit shall be provided to the institute being evaluated at least 60 days in advance.

(f) It shall be the responsibility of each institute to provide such documentation of its activities and accomplishments as the evaluation team may reasonably request. The request for this documentation shall be made at least 60 days prior to the due date for its receipt.

(g) Criteria to be used by the evaluation team in making its determination as to the institute's effectiveness shall include:

(1) Accreditation in sufficient disciplines to successfully mount an interdisciplinary research program;

(2) Sufficient resources, including laboratory, library, computer and other such facilities to support the research program;

(3) A sufficiently close administrative relationship and physical proximity to the university and to all the parts of it needed to provide an effective working relationship with researchers in a wide range of disciplines; and

(4) A demonstrated institutional commitment to the support and continuation of an effective water research program.

(h) Each team shall, within 10 days after completion of its evaluation, submit a written report of its findings to the granting agency for transmittal to the institute. If an institute is found to have deficiencies in meeting the objectives of the Act, it shall be allowed 1 year to correct them and to report such action to the granting agency. The decision as to the institute's eligibility to receive further funding will rest with the granting agency.

(i) After the initial evaluation, each institute shall be reevaluated at least every 4 years.

# PART 402—WATER-RESOURCES RESEARCH PROGRAM AND THE WATER-RESOURCES TECHNOLOGY DEVELOPMENT PROGRAM

### Subpart A—General

Sec.
402.1 Purpose.
402.2 Delegation of authority.
402.3 Definitions.
402.4 Information collection.
402.5 [Reserved]

### Subpart B—Description of Water-Resources Programs

402.6 Water-Resources Research Program.
402.7 Water-Resources Technology Development Program.
402.8—402.9 [Reserved]

### Subpart C—Application, Evaluation, and Management Procedures

402.10 Research project applications.
402.11 Technology-development project applications.
402.12 Evaluation of applications for grants and contracts.
402.13 Program management.
402.14 [Reserved]

### Subpart D—Reporting

402.15 Reporting procedures.
402.16—402.20 [Reserved]

SOURCE: 51 FR 20963, June 10, 1986, unless otherwise noted.

AUTHORITY: Secs. 105 and 106, Pub. L. 98-242, 98 Stat. 97 (42 U.S.C. 10304 and 10305).

EFFECTIVE DATE NOTE: Part 402 was added at 51 FR 20963, June 10, 1986, effective October 1, 1986.

## Subpart A—General

**§ 402.1 Purpose.**

The regulations in this part are issued pursuant to Title I of the Water Resources Research Act of 1984 (Pub. L. 98-242, 98 Stat. 97), which authorizes appropriations to, and confers authority upon, the Secretary of the Interior to promote national programs of water-resources research and technology development.

### § 402.2 Delegation of authority.

The Water-Resources Research Program and the Water-Resources Technology Development Program, as authorized by sections 105 and 106 of the Act (42 U.S.C. 10304 and 10305), have been established as components of the USGS. The Secretary of the Interior has delegated to the Director of the USGS authority to take actions and make the determinations that, under the Act, are the responsibility of the Secretary.

### § 402.3 Definitions.

(a) "Grant" is used in these rules as a generic term for a Federal assistance award, including project grants and cooperative agreements.

(b) "Act" means the Water Resources Research Act of 1984 (Pub. L. 98-242, 98 Stat. 97).

(c) "Educational institution" means any educational institution—privately and/or publicly owned.

(d) "Dollar-for-dollar matching grant" means for each Federal dollar provided to support the projects, a non-Federal dollar also must be provided to the project.

### § 402.4 Information collection.

The information-collection requirements contained in sections 402.10, 402.11, and 402.15 have been approved by the OMB under 44 U.S.C. 3501 *et seq.* and assigned clearance number 1028-0046. The application proposals being collected will contain technical information that will be used by the USGS as a basis for selection and award of grants. The progress reports being collected will contain a description of all work accomplished and results achieved on each funded project and will enable the USGS to carry out its oversight responsibilities and provide dissemination of technical information.

### § 402.5 [Reserved]

## Subpart B—Description of Water-Resources Programs

### § 402.6 Water-Resources Research Program.

(a) Subject to the availability of appropriated funds, the Water-Resources Research Program will provide support, in the form of a dollar-for-dollar matching grant, to educational institutions, private foundations, private firms, individuals, and agencies of local or State governments for research concerning any aspect of a water-resource related problem deemed to be in the national interest. Federal agencies are excluded from receiving matching grants. Grants may be awarded on other than a dollar-for-dollar matching basis in cases where the USGS determines that research on a high-priority subject is of a basic nature that otherwise would not be undertaken.

(b) The types of research to be undertaken under this program are listed below, without indication of priority:

(1) Aspects of the hydrologic cycle;

(2) Supply and demand for water;

(3) Demineralization of saline and other impaired waters;

(4) Conservation and best use of available supplies of water and methods of increasing such supplies.

(5) Water reuse;

(6) Depletion and degradation of groundwater supplies;

(7) Improvements in the productivity of water when used for agricultural, municipal, and commercial purposes; and

(8) The economic, legal, engineering, social, recreational, biological, geographic, ecological, and other aspects of water problems.

(9) Scientific information-dissemination activities, including identifying, assembling, and interpreting the results of scientific and engineering research on water-resources problems.

(10) Providing means for improved communications of research results, having due regard for the varying conditions and needs for the respective States and regions.

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### § 402.7 Water-Resources Technology Development Program.

(a) Subject to the availability of appropriated funds, the Water-Resources Technology Development Program will provide funds in the form of grants or contracts to educational institutions, private firms, private foundations, individuals, and agencies of local or State governments for technology development concerning any aspect of water-related technology deemed to be of State, regional, and national importance, including technology associated with improvement of waters of impaired quality and the operation of test facilities. Federal agencies are excluded from receiving grants or contracts. The types of technology-development to be undertaken under this program shall include items 1 through 10 of § 402.6(b).

(b) The USGS may establish any condition for the matching of funds by the recipient of any grant or cost-sharing under a contract under the technology-development program which the USGS considers to be in the best interest of the Nation.

### §§ 402.8—402.9 [Reserved]

## Subpart C—Application, Evaluation, and Management Procedures

### § 402.10 Research-project applications.

(a) Only those applications for grants that are in response to and meet the guidelines of specific USGS announcements will be considered for funding appropriated for this program.

(b) The USGS program announcements will identify priorities, matching requirements, particular areas of interest, criteria for evaluation, OMB regulations as appropriate, assurances, closing date, and proposal submittal instructions. Program announcements may also include criteria for high-priority subjects of a basic nature that may be funded on other than a dollar-for-dollar basis. Program announcements will be distributed to names on the current USGS mailing list for the Water-Resources Research Program announcements, including new requests received in response to published notices of upcoming program announcements.

(c) Notification of the availability of the program announcement will be published in the Commerce Business Daily and/or FEDERAL REGISTER.

(d) The application for funds must be signed by an individual or official authorized to commit the applicant and it must contain:

(1) A Standard Form 424 "Federal Assistance," Sections I and II completed by applicant, used as the cover sheet for each proposal.

(2) A project summary of no more than one typed, single-spaced page providing the following specific information:

(i) Identification of the water or water-related problems and the problem-solution approach;

(ii) Identification of the proposed scientific contribution of the problem solution;

(iii) Concise statement of the specific objectives of the project;

(iv) Identification of the approach to be used to accomplish the work; and

(v) Identification of potential users of the proposed work.

(3) Narrative information, as specified in the published program announcement, such as project title, project objectives, background information, research tasks, methodology to conduct the research task, the relevancy of the proposed project to water-resources problems, qualifications of the principal investigators and their organizations, and proposed budget with supporting information sufficient to allow evaluation of costs.

### § 402.11 Technology-development project applications.

(a) Grant awards will be used to support those portions of the program for which the principal purpose is other than as described in § 402.11(b). Program announcements and applications will be governed by the same procedures provided in § 402.10.

(b) If it is determined that the principal purpose of a planned award (or awards) is to acquire goods or services for the direct benefit or use of the Government, the action must be regarded as a procurement contract. A competitive solicitation prepared in accordance with applicable acquisition regulations will be issued to interested parties. Notification of the availability of any contract solicitation will be published in the Commerce Business Daily, unless waived in accordance with § 5.202 of the Federal Acquisition Regulation (FAR). Contracts may be awarded without full and open competition only if justified in accordance with FAR Subpart 6.3.

### § 402.12 Evaluation of applications for grants and contracts.

(a) *Grants.* (1) Each grant application will receive technical evaluations from Government and/or non-Government scientific or engineering personnel. Utilizing the criteria for evaluation identified in the applicable announcement, each reviewer will assign a technical score.

(2) Grant applications with low technical ratings will be screened out, and the remaining grant applications will be rank-ordered by review panels.

(3) USGS program officials will compile a single, consolidated rank-ordered list of the grant applications based on technical scoring, program needs and published priorities, and the available Federal funds.

(b) *Contracts.* Proposals for contract awards will be evaluated by a USGS panel. Contracts will be awarded according to procedures contained in the FAR, the Department of the Interior Acquisition Regulation, and in acquisition policy releases issued by the Department and by the USGS.

### § 402.13 Program management.

(a) After the conclusion of negotiations, the USGS will transmit a grant or contract-award document, as appropriate, setting forth the terms of the award.

(b) *Grants.* Recipients will be required to execute funded projects in accordance with OMB Circulars governing cost principles, administrative requirements, and audit, as applicable to their organization type. In addition, OMB Circular A-67, Coordination of Federal Activities in the Acquisition of Certain Water Data, is applicable to awards under these programs.

(c) *Contracts.* Administrative requirements for performance of research contracts will be established in the contract clauses in conformance with applicable procurement regulations and other interior or USGS acquisition policy documents. OMB Circular A-67 will also apply to some contract awards under this program.

### § 402.14 [Reserved]

## Subpart D—Reporting

### § 402.15 Reporting procedures.

(a) Grantees or contractors will be required to submit the following technical reports to the USGS address identified under the terms and conditions of each award.

(1) *Quarterly Technical Progress Report.* This report shall include a description of all work accomplished, results achieved, and any changes that affect the project's scope of work, time schedule, and personnel assignments.

(2) *Draft Technical Completion Report.* The draft report will be required for review prior to submission of the final technical completion report.

(3) *Final Technical Completion Report.* The final report and a camera-ready copy shall be submitted to the USGS within 90 days after the expiration date of the award and shall include a summary of all work accomplished, results achieved, conclusions, and recommendations. The camera-ready copy shall be prepared in a manner suitable for reproduction by a photographic process. Format will be specified in the terms and conditions of the award.

(4) *Final Report Abstract.* A complete Water-Resources Scientific Information Center Abstract Form 102 and National Technical Information Service Form 79 shall be submitted with the final report.

(b) Grantees or contractors will be required to submit financial, administrative, and closeout reports as identified under the terms of each award. Reporting requirements will conform to the procedures described in the Departmental Manual of the Department of the Interior at 505 DM 1-5.

(c) Contracts for technology-development projects may also require delivery of hardware items produced and/or specifications, drawings, test results, or other data describing the funded technology.

### §§ 402.16—402.20 [Reserved]

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# CHAPTER VI—BUREAU OF MINES, DEPARTMENT OF THE INTERIOR

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EDITORIAL NOTE: Nomenclature changes affecting this chapter appear at 39 FR 23997, June 28, 1974.

## SUBCHAPTER A—HELIUM AND COAL

*Part* *Page*

601 Sales of helium by and rental of containers from the Bureau of Mines .......... 204

602 Helium distribution contracts .......... 207

609 Payments required from owners of private lands upon which the Bureau of Mines performs exploration or development work to investigate known coal deposits .......... 220

## SUBCHAPTERS B—L [RESERVED]

## SUBCHAPTER M—RULES AND REGULATIONS FOR THE ADMINISTRATION OF GRANTS

651 Bureau of Mines grant programs .......... 221

652-699 [Reserved]

# SUBCHAPTER A—HELIUM AND COAL

## PART 601—SALES OF HELIUM BY AND RENTAL OF CONTAINERS FROM THE BUREAU OF MINES

Sec.

601.1 Purpose.
601.2 Definitions.
601.3 Contract application forms and procedures.
601.4 Reserved.
601.5 Schedule of prices and charges.
601.6 Purchase price of helium.
601.7 Service charges.
601.8 Settlements under existing contracts.
601.9 Shipping containers
601.10 Reserved.
601.11 Applicability to Federal agencies.

AUTHORITY: Pub. L. 86-777, approved Sept. 13, 1960, 74 Stat. 918 (50 U.S.C. 167-167n).

SOURCE: 46 FR 37506, July 21, 1981, unless otherwise noted.

### § 601.1 Purpose.

The purpose of this Part 601 is to establish procedures governing the sale of helium and related services by the Bureau of Mines, and the rental of helium containers from the Bureau of Mines.

### § 601.2 Definitions.

(a) "Act" means the Helium Act, Pub. L. 86-777, approved September 13, 1960 (74 Stat. 918; 50 U.S.C. 167-167n).

(b) [Reserved]

(c) "Helium plant" means a facility operated by or for the United States Bureau of Mines for the production, purification, repurification, or shipment of helium.

(d) "Bureau" means the Bureau of Mines of the Department of the Interior.

(e) "Purchaser" means any individual, corporation, partnership, firm, association, trust, estate, public or private institution, state or political subdivision thereof, having a new (after revision of this Part) helium purchase contract with the Bureau, and any agency of the United States Government, purchasing helium from the Bureau or using helium containers rented from the Bureau.

(f) "Grade-A helium" means the grade of helium produced at the Bureau's helium plants, and is 99.995 percent pure helium, or better by volume.

(g) "Standard cubic foot" (scf) is a 1-cubic foot volume of Grade-A helium measured at a pressure of 14.7 pounds per square inch absolute and a temperature of 70° Fahrenheit.

(h) "Cylinder" means a standard-type cylinder of approximately 1.5 cubic feet internal volume, designed for a filling pressure of 1,800 pounds per square inch gage or more, which will stand vertically without external support with the center of the valve outlet not less than 50½ inches nor more than 58½ inches above the floor, equipped with a standard-type cylinder valve, safety relief device, and valve-protective cap, or a similar cylinder acceptable to the Bureau as a standard type.

(i) "Valve" means a standard-type cylinder valve acceptable to the Bureau of Mines having a valve outlet conforming to Specification No. 580 or No. 350 as described by the latest edition of Compressed Gas Association, Inc., Pamphlet V-1, ANSI B57.1-1977; Provided, That at the Bureau's option, valves with outlets conforming to other specifications may be accepted as alternate standards.

(j) "Tank car" means a railroad car permanently equipped with multiple tubes manufactured in accordance with 49 CFR 179.500.

(k) "Tube trailer" means a road-type semitrailer without motive power permanently equipped with multiple tubes manufactured in accordance with 49 CFR 178.36, 178.37, or 178.45.

(l) "Tube module" means one or more seamless steel tubes, manufactured in accordance with 49 CFR 179.500, that by means of a framework are joined together to form a unit. Valves may be manifolded.

(m) "Liquid helium trailer" means a special road-type semitrailer without motive power, equipped with a vacuum-jacketed container suitable for transporting 1,000 U.S. gallons or more of liquid helium. The container may be separable or an integral part of the chassis and dependent upon design, may or may not require a Department of Transportation (DOT) special permit for transporting.

(n) "Liquid helium dewar" (dewar) means a portable or skid-mounted, vacuum-jacketed container suitable for shipping less than 1,000 U.S. gallons of liquid helium.

(o) "Schedule of Prices and Charges" (Schedule) means a listing of prices and charges for products and services provided under contract pursuant to this Part.

(p) "Federal Agency" is any department, independent establishment, commission, administration, foundation, authority, board, or bureau of the United States Government, or any corporation owned, controlled, or in which the United States Government has a proprietary interest, as these terms are defined in 5 U.S.C. 101-05; 5 U.S.C. 551(1); 5 U.S.C. 552(e); or in 18 U.S.C. 6, but does not include Federal agency contractors.

(q) "Contracting officer" is the person executing a contract on behalf of the Government, and includes any duly appointed successor.

### § 601.3 Contract application forms and procedures.

(a) Any prospective helium purchaser may make application to the Bureau to become a purchaser of helium, and, if desired, rent containers from the bureau and, upon meeting the requirements of this Part and upon execution of a purchase (and container rental) contract with the Bureau, may purchase helium (and rent containers) from the Bureau. To be eligible, a prospective purchaser must: demonstrate adequate financial resources to pay for helium and helium-related services in advance, hold a certificate of competency and/or a determination of eligibility from the Small Business Administration if the prospective purchaser is a small business concern and is determined to be nonresponsible and/or ineligible by the contracting officer, and be otherwise qualified and eligible to enter into a Bureau contract under applicable laws and regulations.

(b) The information collection requirement contained in this paragraph has been approved by the Office of Management and Budget under 44 U.S.C. 3507 and assigned clearance number 1032-0111. The information is being collected to identify firms desiring to enter into a contract. This information will be used to complete contract documents and establish cash advance required. The obligation to respond is required to obtain a benefit.

(c) The contract shall include, among other things, duties and responsibilities of the parties, definitions, term, minimum contract volume, and other conditions, such as advance payments, deposits, surety bonds, repurchase rights of the Government, liabilities, reservations with respect to sales and deliveries, power of inspection, notification to repurchasers, violations and penalties, cancellation and assignment of contract, termination, general provisions, and standard provisions.

(d) Application forms are available upon written request from Division of Helium Operations, 1100 S. Fillmore St., Amarillo, Texas 79101. Applicable contract form(s) and Schedule will be included for examination by the prospective purchaser.

(e) Upon approval by the Contracting Officer of the returned application, the contract will become effective when executed by both parties.

### § 601.4 [Reserved]

### § 601.5 Schedule of prices and charges.

(a) The Schedule of Prices and Charges (Schedule) is published by the Bureau of Mines, Division of Helium Operations, and is periodically updated. The Schedule is available upon request from the Division of Helium Operations, 1100 S. Fillmore St., Amarillo, Texas 79101, telephone 806-376-2638 or FTS 735-1638. The Schedule shows prices and charges for helium, ordinary related services, use or rental of Bureau-owned helium containers or equipment, cash advance, and deposit required, and bonds and/or insurance to guarantee return of containers.

(b) Terms and conditions under which products and services can be acquired under contract pursuant to this Part are shown in Appendix 1 to the

Schedule. The Terms and Conditions are reviewed at least annually, and are revised as required.

(c) Revisions to the Schedule are determined at least annually by the Division of Helium Operations in accordance with Office of Management and Budget (OMB) Circular No. A-25, as revised. In no case will a revised Schedule become effective in less than 30 days after date of distribution to all Bureau helium customers known at the time of distribution.

### § 601.6 Purchase price of helium.

(a) The purchase price of Grade-A helium shipped f.o.b. origin shall be the price stated in the Schedule that is in effect on the date the helium is shipped from the helium plant.

(b) [Reserved]

(c) The purchase price of Grade-A helium shipped f.o.b. destination shall be the price stated in the Schedule that is in effect on the date the helium is shipped from the helium plant plus any service charges, container charges, transportation charges, and other charges incurred in making such delivery. Delivery of helium f.o.b. destination is made only in Bureau-furnished containers.

### § 601.7 Service charges.

In addition to the purchase price of helium, the following charges for services and use of equipment rented from the Bureau shall be paid by the purchaser.

(a) *For filling containers.* The charge for filling helium containers shall be as shown in the Schedule that is in effect on the date the helium is shipped from the helium plant.

(b) *For ordinary work performed on containers supplied by the purchaser and for ordinary services performed in connection with shipment of helium from a helium plant.* The charge for ordinary work shall be as shown in the Schedule that is in effect on the date the work is performed.

(c) *For extraordinary expenses.* Such expenses incurred in connection with any contract or delivery for which prices are not stated in the effective Schedule including, but not limited to, costs of work on purchaser's containers, filling, servicing, and rental of containers of types other than those stated in the effective Schedule, purifying helium beyond normal plant purity, (delete "liquefying helium") analytical services, shipment of helium from other than a helium plant selected by the Bureau, and unusual handling, transportation, and communications, may be determined by the Bureau and charged to the purchaser as they arise on the basis of the cost of rendering the services, making due allowance for contingencies, overhead expense, and commercial common-carrier rates.

(d) *For use of helium containers supplied by the Bureau.* The charge for use of each Bureau-supplied container shall be as shown in the Schedule in effect on the date of shipment from a helium plant.

### § 601.8 Settlements under existing contracts.

Contracts for the purchase of helium or for the rent of Bureau-owned shipping containers which are in effect on the effective date of the amended regulations in this part shall remain in effect, subject to the terms and conditions of the amended regulations in this part, for a period of not more than 90 days after the effective date of these amended regulations or until replaced by new contract or contracts as described in these amended regulations, should such replacement occur prior to expiration of the 90 days. In the event that purchaser does not enter into replacement contract or contracts within 90 days after effective date of these regulations, the existing contract(s) shall terminate and purchaser shall pay any sums due Bureau under terms of the contracts and shall return any Bureau-owned shipping containers outstanding under any container rent contract so terminated.

### § 601.9 Shipping containers.

(a) *Containers may be provided by the purchaser or the Bureau.* The purchaser may provide containers or may request the Bureau to provide them under contract. Containers provided by the purchaser must be satisfactory to the Bureau in all respects, must be free internally from oil or water, and shall comply with the requirements for shipment in interstate commerce. The Bureau will not use or fill any container which in its opinion is unsafe or unsuitable.

(b) *Provisions applicable to all types of containers supplied by the Bureau.* Specific provisions for all types of containers, such as, cylinders, tank cars, tube trailers, tube modules, liquid helium trailers, and liquid helium dewars, are detailed in the container rental contract and the Schedule.

### § 601.10 [Reserved]

### § 601.11 Applicability to Federal Agencies.

The regulations in this part are applicable to Federal agencies procuring helium or services from Bureau or using containers furnished by Bureau; *except that* Federal agencies shall not be required to: (a) enter into contracts for the purchase of helium or lease of containers, (b) furnish advance payments, or (c) provide surety for the return of containers or payment of bills.

## PART 602—HELIUM DISTRIBUTION CONTRACTS

Sec.

602.1 Purpose.
602.2 Definitions.
602.3 Bureau helium distribution contracts.

APPENDIX

AUTHORITY: The Helium Act of 1960, Pub. L. 86-777 (50 U.S.C. 167, et seq.); 5 U.S.C. 301.

SOURCE: 46 FR 60436, Dec. 10, 1981, unless otherwise noted.

### § 602.1 Purpose.

The purpose of this Part 602 is to establish procedures governing distribution of Bureau of Mines helium by a system of authorized private helium distributors. To the same end, the regulations prescribe certain requirements that must be met by private helium distributors under new contracts, entered into with the Bureau of Mines with an effective date of January 15, 1982, or later, to distribute Bureau of Mines helium.

### § 602.2 Definitions.

As used in this part—

(a) "Helium Act" means Pub. L. 86-777, 74 Stat. 918 (50 U.S.C. 167-167n).

(b) "Helium" means the element helium regardless of its physical state.

(c) "Bureau of Mines helium" or "Bureau helium" is helium, regardless of physical state or purity, available for purchase or purchased from the Secretary or a Bureau helium distribution contractor after the effective date of this revision of 30 CFR 602. Bureau helium cannot be obtained from any other source of supply. Bureau of Mines helium includes volumes of helium available for delivery or delivered to the purchaser or Bureau helium distribution contractors in the Grade-A gaseous physical state or liquid physical state, and volumes of Grade-A gaseous helium used as raw stock to produce (1) liquid helium, and the liquid produced therefrom, (2) a gaseous or liquid mixture having a purity of helium different from Grade-A, (3) a gaseous or liquid mixture having a concentration of helium-4 isotope different from the concentration of such isotope in Grade-A helium, and (4) helium mixtures different in any other way from Grade-A gaseous helium. Bureau helium does not include private helium stored under contract with the Bureau and redelivered to the private enterprise in crude, Grade-A gaseous, or liquid helium form.

(d) "Grade-A helium" means the grade of helium produced at the Bureau's helium plants, and it is 99.995 percent pure helium or better, by volume.

(e) "Federal agency" means any department, independent establishment, commission, administration, foundation, authority, board, or bureau of the United States Government, or any corporation owned, controlled, or in which the United States Government has a proprietary interest, as these terms are defined in 5 U.S.C. 101-105; 5 U.S.C. 551 (1); 5 U.S.C. 552(e); or in 18 U.S.C. 6, but does not include Federal agency contractors.

(f) "Bureau helium distribution contractor" is a private helium merchant (as defined by the Texas Business and

Commercial Code Ann., Title 1, sec. 2.104 (Uniform Commercial Code)) that, by new contract with an effective date of January 15, 1982, or later with the Bureau, has Bureau helium available for distribution.

(g) "Private helium purchaser" means any individual, corporation, partnership, firm, association, trust, estate, public or private institution, state or political subdivision thereof, purchasing or wanting to purchase helium. The term does not include Federal agencies, but does include Federal agency contractors.

(h) "Helium requirement" or "requirement of helium" is all helium, regardless of physical state or in mixture with other gases, that is required by or delivered to a Federal agency to accomplish an objective, project, mission, or program of the Federal agency.

(i) "Major helium requirement" or major requirement of helium" is a helium requirement or delivery of 5,000 standard cubic feet (scf), measured at 14.7 pounds per square inch absolute pressure and 70° Fahrenheit temperature, or more, including liquid helium gaseous equivalent, during a calendar month, including the first 5,000 scf per calendar month when the "helium requirement" equals or exceeds 5,000 scf per calendar month.

(j) "Secretary" is the Secretary of the Department of the Interior.

(k) "Bureau" is the Bureau of Mines of the United States Department of the Interior.

### § 602.3 Bureau helium distribution contracts.

(a) Any private helium merchant may make application to the Bureau to become a Bureau helium distribution contractor and, upon meeting the requirements of this part and upon execution of a three-year distribution contract with the Bureau, may become a Bureau helium distribution contractor. To be eligible, a prospective contractor must demonstrate: adequate financial resources to pay for Bureau helium and helium-related services in advance, adequate facilities and equipment to meet delivery schedules and quality standards required by purchasers of Bureau helium, a satisfactory record of performance in the distribution of helium, and/or other compressed gases, a certificate of competency and/or a determination of eligibility from the Small Business Administration if the prospective contractor is a small business concern and is determined to be nonresponsible and/or ineligible by the contracting officer, and be otherwise qualified and eligible to receive an award of a Bureau helium distribution contract under applicable laws and regulations. Effective January 15, 1982, and thereafter, only those helium merchants having a valid Bureau helium distribution contract shall be included on Bureau lists of Bureau helium distribution contractors. (The currently approved helium distribution contract is set out in the Appendix to this part.)

(b) The information collection requirements contained in this section have been approved by the Office of Management and Budget under 44 U.S.C. 3507 and assigned clearance number 1032-0113. The information is being collected to identify firms desiring to become helium distribution contractors. This information will be used to determine responsible applicants as possible contractors, to establish an accountability of helium transfer between distributors, and to report distributor annual sales, transfers, and purchases of Bureau of Mines helium as certification of compliance with 30 CFR 602. The obligation to respond is required to obtain a benefit.

(c) Bureau helium distribution contracts shall require the Bureau helium distribution contractor to deliver only Bureau helium to supply (1) major helium requirements of any Federal agency, whether or not Bureau helium is specified by the agency, and (2) any helium requirement of any Federal agency if procurement documents in any manner specify or evidence intent to acquire Bureau helium. Information about which Federal agencies have major helium requirements is available from Bureau of Mines Division of Helium Operations, 1100 S. Fillmore St., Amarillo, Texas 79101, telephone 806 376-2638 or FTS 735-1638.

(d) Bureau helium distribution contracts shall also require the Bureau helium distribution contractor to deliver only Bureau helium to (1) any private helium purchaser, including Federal agency contractors, if procurement documents in any manner specify or evidence intent to acquire Bureau helium, or (2) another Bureau helium distribution contractor if certification as Bureau helium is required or furnished.

(e) Contracts shall include provisions for sources of supply of Bureau helium, quantity, quality, delivery requirements, Bureau helium book inventory, actual physical volume of helium in inventory, commingling, accounting and reporting procedures, records and facilities examinations, shipping points, payments, and contract termination.

## APPENDIX

Bureau Helium Distribution Contract No. 14-09-0060 ——— Between United States Department of the Interior, Bureau of Mines and ———

### *Contents*

Preamble
Article I. Definitions
Article II. Term of Contract
Article III. Bureau Helium Distribution Contractor
Article IV. Bureau of Mines
Article V. Conditions
Article VI. General Provisions
Addendum "A"—Application
Addendum "B"—Certificate of Resale of Bureau of Mines Helium (Form HA-285a)
Addendum "C"—Bureau of Mines Helium: Stocks, Receipts, and Distribution Annual Report (Form 6-1575-A(1-77) Rev.)

## BUREAU HELIUM DISTRIBUTION

### *Contract*

This contract, made this —— day of ———, 19—, pursuant to the Helium Act (Act of 1960, Pub. L. 86-777, 74 Stat. 918, 50 U.S.C. 167 et seq., 5 U.S.C. 301), between the United States of America, Department of the Interior, Bureau of Mines, hereinafter styled Bureau of Mines, represented by the officer executing this contract, and ——————— whose principal address is —————— hereinafter styled Bureau Helium Distribution Contractor, or Contractor.

Witnesseth that:

Whereas, pursuant to provisions of the Helium Act: "The Department of Defense, the Atomic Energy Commission, and other agencies of the Federal Government, to the extent that supplies are readily available, shall purchase all major requirements of helium from the Secretary," (of the Department of the Interior);

Whereas, the Bureau of Mines, by virtue of authority delegated by the "Secretary" (of the Department of the Interior) under the Helium Act administers the production and distribution of helium for Federal use;

Whereas, the authorization of private helium merchants to participate in the distribution of Bureau of Mines helium for Federal use is advantageous to both the United States Government and the private helium merchants; and

Whereas, an application to become a Bureau Helium Distribution Contractor, attached to and forming a part of this contract (Addendum A), has been received by the Bureau of Mines from the private helium, merchant named as a party to this contract.

Now Therefore, in consideration of the mutual and dependent covenants herein contained, it is mutually agreed between the parties as follows:

Article I—Definitions

1.1 "Bureau helium distribution contractor" is a private helium merchant (as defined by the Texas Business and Commercial Code Ann., Title 1, Sec. 2.104 (Uniform Commercial Code)) that by new contract with an effective date of January 15, 1982, or later with the Bureau, has Bureau helium available for distribution.

1.2 "Bureau" is the Bureau of Mines of the United States Department of the Interior.

1.3 "Bureau of Mines helium" or "Bureau helium" is helium, regardless of physical state or purity, available for purchase or purchased from the secretary or another Bureau helium distribution contractor after the effective date of this contract. Bureau helium cannot be obtained from any other source of supply. Bureau of Mines helium includes volumes of helium available for delivery or delivered to purchasers or Bureau helium distribution contractors in the Grade-A gaseous physical state or liquid physical state and volumes of Grade-A gaseous helium used as raw stock to produce (1) liquid helium and the liquid produced therefrom, (2) a gaseous or liquid mixture having a purity of helium different from Grade-A, (3) a gaseous or liquid mixture having a concentration of helium-4 isotope different from the concentration of such isotope in Grade-A helium, and (4) helium mixtures different in any other way from Grade-A gaseous helium. Bureau helium does not include private helium stored under contract with the Bureau and redelivered to the private enterprise (owner) in crude Grade-A gaseous, or liquid helium form.

1.4 "Contracting officer" is the person executing this contract on behalf of the Government and includes a duly appointed successor or authorized representative.

1.5 "Federal agency" is any department, independent establishment, commission, administration, foundation, authority, board, or bureau of the United States Government, or any corporation owned, controlled, or in which the United States Government has a proprietary interest, as these terms are defined in 5 U.S.C. 101-05; 5 U.S.C. 551(1); 5 U.S.C. 552(e); or in 18 U.S.C. 6, but does not include Federal agency contractors.

1.6 "Federal Agency Contractor" is any individual, corporation, partnership, firm, association, trust, estate, public or private institution, or a State or political subdivision thereof which has entered into or that is obligated by a contract or cooperative agreement with a Federal agency, or received a grant from a Federal agency, or which subcontracts with a Federal Agency Contractor.

1.7 "Private helium purchaser" means any individual, corporation, partnership, firm, association, trust, estate, public or private institution, state or political subdivision thereof, purchasing or wanting to purchase helium. The term does not include Federal agencies, but does include Federal agency contractors.

1.8 "Helium" is the element helium regardless of its physical state.

1.9 "Helium requirement" or "requirement of helium" is all helium, whether in the gaseous or liquid state or in mixtures with other gases, that is required by or delivered to a Federal agency, to accomplish an objective, project, mission, or program of the Federal agency.

1.10 "Major helium requirement" or "major requirement of helium" is a helium requirement of 5,000 scf or more during a calendar month, including the first 5,000 scf per calendar month when the "helium requirement" equals or exceeds 5,000 scf per calendar month.

1.11 "Secretary" is the Secretary of the Deparrment of the Interior.

1.12 "Shipping point" is a shipping facility of the Bureau Helium Distribution Contractor from which Bureau of Mines helium is available.

1.13 "Standard cubic foot" (scf) is a 1-cubic-foot volume of Grade-A helium measured at a pressure of 14.7 pounds per square inch absolute and a temperature of 70° Fahrenheit. Volumes of liquid helium shall be expressed in liters or U.S. gallons. One liter of liquid helium is equivalent to 26.63 standard cubic feet of gaseous helium. One U.S. gallon of liquid helium is equivalent to 100.8 standard cubic feet of gaseous helium. One pound of liquid helium is equivalent to 96.67 standard cubic feet of gaseous helium. Appropriate Grade-A gaseous equivalents of volumes of helium mixtures different in any way from Grade-A gaseous helium may be used, and such equivalents must be used when required by the Division of Helium Operations, Bureau of Mines, Amarillo, Texas.

1.14 "Grade-A helium" means the grade of helium produced at the Bureau's helium plants, and it is 99.995 percent pure helium or better, by volume.

### Article II—Term of Contract

2.1 This contract shall be effective on the date heretofore stated and shall remain effective for a period of three (3) years thereafter unless sooner terminated as hereinafter provided in section 6.2 or for default.

### Article III—Bureau Helium Distribution Contractor

3.1 The Bureau Helium Distribution Contractor (hereafter styled Contractor) shall deliver only Bureau of Mines helium to supply: (1) major helium requirements of a Federal agency without regard as to whether or not Bureau of Mines helium is specified by the agency, (2) any quantity of helium to a Federal agency if procurement documents specify in any manner that Bureau of Mines helium be furnished, (3) any quantity of helium to private helium purchasers if procurement documents specify in any manner the intent that Bureau of Mines helium be furnished, (4) any quantity of helium to another Bureau helium distribution contractor if certification as Bureau of Mines helium is required or furnished.

3.2 Helium delivered for Federal use under the terms of this contract shall conform to the quality, quantity, and delivery requirements agreed to between the Contractor and the purchasing Federal Agency or private helium purchaser.

3.3 Each delivery of helium that requires Bureau of Mines helium in accordance with Sec. 3.1 of this contract shall be made only from an inventory of Bureau of Mines helium on hand except as provided in Sec. 3.4 of this contract.

3.4 Helium is a fungible commodity; therefore, the Contractor may commingle Bureau of Mines helium with helium from other sources. For purposes of Bureau helium accounting records, as much of the Contractor's helium inventory will be considered Bureau of Mines helium as is equal to the volume of: (1) helium purchased from the Bureau of Mines and delivered to the Contractor, plus (2) helium delivered to the Contractor by another Bureau helium distribution contractor and certified as Bureau of Mines helium in accordance with Sec. 3.11 of this contract, less (3) helium deliveries in accordance with Sec. 3.1 of this contract. The Contractor may, except as restricted by Sec. 3.6 of this contract, sell as Bureau of Mines helium volumes of helium from its inventory even though its inventory does not contain, at the time of sale, sufficient helium purchased from the Bureau of Mines or helium received from and certified as Bureau of Mines helium by another Bureau helium distribution contractor to meet the Bureau of Mines helium requirements of the purchaser; however, the Contractor shall report such sales as sales of Bureau of Mines helium and shall, within thirty (30) calendar days following the end of a reporting period or discovery of a negative inventory of Bureau of Mines helium, whichever is sooner, place a firm procurement order with the Bureau of Mines or another Bureau helium distribution contractor for sufficient Bureau of Mines helium to restore its Bureau of Mines helium inventory to a positive value. Failure to order sufficient helium within the thirty (30) day period shall be sufficient grounds to terminate this contract for cause, according to Sec. 3.7.

3.5 The Contractor's opening inventory of Bureau of Mines helium on its initial report to the Bureau shall be any Bureau of Mines helium received and not delivered in accordance with the provisions of this contract within the thirty (30) day period immediately preceding the effective date of this contract, except that, in the event that the Contractor was an Eligible Private Helium Distributor at the time of entering into this contract, opening inventories under this contract will be determined by the Bureau of Mines based on the Eligible Distributor's reports for the previous reporting periods and examination of Eligible Distributor's helium accounting records by a Bureau representative.

3.6 The inventory balance of Bureau helium at the end of an annual reporting period may be carried forward as the opening inventory for the subsequent period, provided, however, that at no time shall the inventory of Bureau helium exceed the total volume of helium in physical inventory.

3.7 At the end of each annual reporting period, the Contractor shall have a positive or zero balance of Bureau of Mines helium in its inventory. Negative closing balances of Bureau of Mines helium at the end of the annual reporting period, whether reported by the Contractor on its "Bureau of Mines Helium" (Addendum C), or revealed through Bureau of Mines examination of the Contractor's Bureau helium accounting records, if not changed to a positive value within thirty (30) days according to Sec. 3.4, shall be sufficient cause for termination of this contract.

3.8 The Contractor shall not add or delete shipping points designated in the original application (Addendum A) except through amendment of this contract. The Contracting Officer, upon receipt of a written request from the Contractor to amend the contract to add or delete shipping points, along with a full explanation of the reason therefor, may send a contract amendment to the Contractor for execution or notify the Contractor of rejection of the request.

3.9 The Contractor shall keep Bureau helium accounting records necessary to show compliance with this contract. Such records shall be kept in a central location and shall be retained for one (1) year following the last day of the applicable annual reporting period. Helium accounting records shall include but are not limited to the following: (1) records of sales of Bureau of Mines helium to each Federal agency and to each private helium purchaser, (2) all pertinent documents supporting sales of Bureau of Mines helium, (3) helium sales contracts between the Contractor and another Federal Agency Contractor who, in the opinion of the Contracting Officer, may reasonably be considered a Federal Agency Contractor, (4) all pertinent documents supporting any contention that a Federal Agency Contractor was not required to use Bureau of Mines helium to meet the requirements of a Federal Agency, or a Federal Agency Contractor whose order intended delivery of Bureau of Mines helium in the opinion of the Contracting Officer, (5) certificates of Resale of Bureau of Mines helium certifying the resale of helium as required by Sec. 3.11 of this contract.

3.10 The Contracting Officer or his duly authorized representative shall have access to and the right to examine, during the Contractor's normal business hours, any pertinent books, documents, records, and physical facilities involving transactions related in any way to this contract.

3.11 Sales of Bureau of Mines helium to another Bureau helium distribution contractor shall be certified on a "Certificate of Resale of Bureau of Mines Helium" as illustrated in Addendum B to this contract. The original of the Certificate shall be furnished to the buyer. The Contractor shall submit a fully executed copy of each Certificate issued during a reporting period with its annual report of "Bureau of Mines Helium." One copy of each Certificate issued shall be retained in the Central Bureau helium accounting records of the Contractor.

3.12 Receipts of Bureau of Mines helium from another Bureau helium distribution contractor shall be substantiated by the original "Certificate of Resale of Bureau of Mines Helium" executed and issued by the selling Bureau helium distribution contractor at the time of the sale and retained in the buying contractor's Bureau helium accounting records according to Sec. 3.9(5).

The buying contractor shall submit a copy of each original Certificate received during a reporting period with its annual report of "Bureau of Mines Helium," (Addendum C). No claimed receipt of Bureau of Mines helium from another Bureau helium distribution contractor will be allowed on an annual report unless fully supported by copies of valid Certificates.

3.13 The Form No. 6-1575-A Rev., "Bureau of Mines Helium" attached as Addendum C to this contract, shall be used by the Contractor to report the stocks, receipts, and distribution of Bureau of Mines helium. The required reporting period is January 1 through December 31 of each calendar year. The reports are due at the Bureau of Mines office indicated below on or before the thirtieth (30th) day of January of each year following the applicable preceding reporting period. The completed forms shall be submitted to the Department of the Interior, Bureau of Mines, Division of Helium Operations, 1100 S. Fillmore St., Amarillo, Texas 79101. Copies of the blank form may be obtained from the above address.

### Article IV—Bureau of Mines

4.1 The Bureau of Mines will place the Contractor's name, address, and locations of designated shipping points on the Bureau of Mines list of Bureau Helium Distribution Contractors.

4.2 The Bureau of Mines will furnish its list of Bureau Helium Distribution Contractors to known users of Bureau of Mines Helium, and to other parties upon request, for their use in obtaining Bureau of Mines helium.

4.3 The Bureau of Mines authorizes the Contractor to sell and distribute Bureau of Mines helium in accordance with the provision of this contract and to compete in the open market for such sales of Bureau of Mines helium that are otherwise reserved to the Secretary of the Department of the Interior.

4.4 The Bureau of Mines will furnish, upon request by the contractor, information as to which Federal agencies have major helium requirements.

### Article V—Conditions

5.1 *Repurchase rights.* The Bureau of Mines shall have the right to repurchase from the original purchaser helium that has been sold by the Bureau and that has not been resold, lost or dissipated, when needed for United States Government use, as provided in Sec. 6(e) of the Helium Act. However, small volumes of Bureau helium purchased by the Contractor from another Bureau helium distribution contractor shall not be subject to repurchase by the Bureau.

5.2 *Liability*

(a) The Bureau of Mines warrants the quality and quantity of helium delivered to the original purchaser only and assumes no further liability, financial or otherwise, in connection with any sale or delivery of helium hereunder, including but not limited to claims relating to: (1) losses on business transactions or commitments between original purchaser and third parties, such as the Contractor, (2) losses on original purchaser's helium containers filled by the Bureau, or (3) losses occasioned by transportation delays.

(b) Contractor shall be liable for any and all actual damages to the Government caused by Contractor, Contractor's representatives, or Contractor's owned or leased equipment.

(c) Contractor is hereby advised that helium requirements of the United States Government shall have priority over non-Government requirements and that such priority requirements of the Government or occasions of Force Majeure may cause delay or deferral of shipment of any helium ordered by Contractor from the Bureau of Mines or another Bureau helium distribution contractor under this contract.

### Article VI—General Provisions

6.1 This contract cannot be assigned or otherwise transferred without the express written approval of the Contracting Officer.

6.2 This contract may be terminated at any time by either party by serving not less than sixty (60) days' written notice of termination upon the other party, stating therein the date that such termination shall be effective. In the event of contract termination under the provisions of this Sec. 6.2, a report of receipts and distribution of Bureau of Mines helium, as required by Sec. 3.13 of this contract, shall be submitted for the period from January 1 to the effective date of the termination in the calendar year in which the termination occurs within 15 days after the effective date of the termination.

6.3 *Disputes*

(A) Except as otherwise provided in this contract, any dispute concerning a question of fact arising under this contract which is not disposed of by agreement shall be decided by the Contracting Officer, who shall reduce his decision to writing and mail or otherwise furnish a copy thereof to the Contractor. The decision of the Contracting Officer shall be final and conclusive unless, within 30 days from the date of receipt of such copy, the Contractor mails or otherwise furnishes to the Contracting Officer a written appeal addressed to the Secretary. The decision of the Secretary or his duly authorized representative for the determination of such appeals shall be final and conclusive unless determined by a court of competent jurisdiction to have been fraudulent, or capricious, or arbitrary, or so grossly erroneous as necessarily to imply bad faith, or not supported by substantial evidence. In connection with any appeal proceeding under this clause, the Contractor shall be afforded an opportunity to be heard and to offer evidence in support of its appeal. Pending final decision of a dispute hereunder, the Contractor shall proceed diligently with the performance of the contract and in accordance with the Contracting Officer's decision.

(b) This "Disputes" clause does not preclude consideration of law questions in connection with decisions provided for in Sec. 6.3.a above, *Provided*, That nothing in this contract shall be construed as making final the decision of any administrative official, representative, or board on a question of law.

Standard Provisions

The remainder of the contract is comprised of nine standard provisions as follows:

6.4 Officials Not to Benefit
6.5 Covenant Against Contingent Fees
6.6 Utilization of Small Business Concerns
6.7 Utilization of Labor Surplus Area Concerns
6.8 Utilization of Minority Business Enterprises
6.9 Equal Opportunity
6.10 Affirmative Action for Handicapped Workers
6.11 Affirmative Action for Disabled Veterans and Veterans of the Vietnam Era
6.12 Clean Air and Water

In witness whereof, the parties hereto have caused this contract to be fully executed in duplicate by their proper officers the day and year first above written.

United States of America, Department of the Interior, Bureau of Mines.
By— ————————————————

*Contracting Officer.*

Bureau Helium Distribution Contractor.

————————————————
(Name of Individual or Company)
By ————————————————
(Signature)
Title ————————————————

(The following is to be executed if Contractor is a Corporation.)

I, the undersigned, hereby certify that I am the ——— Secretary of the above-named corporation; that the officer who signed this contract on behalf of such corporation was then acting in the capacity indicated; and that the records of the corporation, of which I have custody, indicate that such officer has the authority to so bind the corporation and that such authority is within the scope of its corporate power, and has not been revoked.

————————————————
(Signature)
(Affix Corporate Seal)

Addendum A

Form 6–1561-X
Helium Ope (9-81)

UNITED STATES
DEPARTMENT OF THE INTERIOR
BUREAU OF MINES
WASHINGTON D.C. 20241

O.M.B. No. 1032-0113
Approval Expires 12 31 83

**Application to enter into a contract with the United States Department of the Interior, Bureau of Mines, as a Bureau Helium Distribution Contractor**

"The Paperwork Reduction Act of 1980 (44 U.S.C. 351) requires us to inform you that: This information is being collected to determine essential applicant data necessary for completion of a contract. This information will be used to determine the legitimacy of applicants as possible helium distribution contractors. The obligation to respond is required to obtain a benefit."

Application is hereby made on this date, ______________, 19___, by ________________________________ whose principal address is ________________________________________________ to enter into a contract with the United States Department of the Interior, Bureau of Mines, as a "Bureau Helium Distribution Contractor." Upon acceptance of this application and execution of the contract by both parties, the Contractor may sell and distribute Bureau of Mines helium for Federal use and may compete in the open market for such sales that are otherwise reserved, by Statute, to the Secretary of the Department of the Interior.

Applicant submits the following information and attests to its accuracy and completeness, with the understanding that the Bureau of Mines may make further inquiry of Applicant or others. (If additional space is needed to answer any question, additional sheets may be attached. If additional sheets are used, please reference all answers to the applicable question number.)

1. As of the date of this application, applicant is ☐ or is not ☐ distributing helium for Federal use as a Bureau of Mines "Eligible Private Helium Distributor."

2. If the answer to 1. above is negative, applicant has ☐ or has not ☐ previously been an Eligible Private Helium Distributor.

3. Indicate the range of total volume of helium (commercial and/or Bureau of Mines helium) distributed by the Company during the past calendar year:

☐ More than
2,000 Mcf of gaseous helium
☐ Less than

☐ More than
50,000 liters of liquid helium
☐ Less than

4. Indicate the range of total volume of other compressed or liquefied gases distributed by the company during the past calendar year.

☐ More than
5,000 Mcf of compressed gases
☐ Less than

☐ More than
100,000 liters of liquefied gases
☐ Less than

5. List each shipping point, along with the mailing address thereof, that Applicant wishes to designate for distribution of Bureau of Mines helium for Federal use.

6. Describe Applicant's facilities and equipment to be used in supplying helium requirements of Federal use customers.

a. Plant and container filling

b. Containers

c. Quality control and methods

d. Does Applicant have rail siding within or adjacent to its facilities?

7. Based on past performance records, estimate delivery time to Federal use customers that Applicant anticipates serving.

________ % within 24 hours after receipt of order.

________ % longer than 24 hours after receipt of order.

8. Based on Applicant's present accounting system, describe any problems that would result from the records and reporting requirements of the contract.

9. Present a statement of facts concerning Applicant's financial capability, including the maintenance of an inventory of Bureau of Mines helium to meet anticipated sales for Federal use.

The Government reserves the right to reject any application and not award a contract.

Applicant hereby acknowledges that it has reviewed the attached contract documents and agrees to the terms thereof, and further agrees that this application, if approved, will be attached to and form a part of the resulting contract.

______________________________
Name of Applicant

______________________________
Name and Title of Signer
(Print or Type)

______________________________
Signature

______________________________
Date

Addendum B

Form 6-1560-A
Helium Oper. (9-81)

UNITED STATES
DEPARTMENT OF THE INTERIOR
BUREAU OF MINES
WASHINGTON D.C. 20241

O.M.B. No. 1032-0113
Approval Expires 12 31 53

**INDIVIDUAL COMPANY DATA—PROPRIETARY**

The data furnished in the report will be treated in confidence by the Department of the Interior, except that they may be disclosed to Federal defense agencies, or to the Congress upon official request for appropriate purposes.

# CERTIFICATE
# OF
# RESALE
# OF
# BUREAU OF MINES HELIUM

"The Paperwork Reduction Act of 1980 (44 U.S.C. 35) requires us to inform you that: This information is being collected to determine distributor accountability and certification of compliance with the 30 CFR 602. This information will be used to account for helium transfer between distributors. The obligation to respond is required to obtain a benefit."

I certify that on this _______ day of ____________________, 198__, ________________ standard cubic feet of Bureau of Mines helium (convert liquid helium to its gaseous helium equivalent) was sold from

(Company)______________________________________________________,

to

(Company)______________________________________________________.

Name ______________________________
Title ______________________________
Company ______________________________
Address ______________________________
______________________________

Signature ______________________________

Form 6-1575-A
Helium Oper. 9-81)

Addendum C
UNITED STATES
DEPARTMENT OF THE INTERIOR
BUREAU OF MINES
WASHINGTON D.C. 20241

O.M.B. No. 1032-0113
Approval Expires 12 31 '83

**INDIVIDUAL COMPANY DATA—PROPRIETARY**

The data furnished in this report will be treated in confidence by the Department of the Interior, except that they may be disclosed to Federal defense agencies or to the Congress upon official request for appropriate purposes.

## BUREAU OF MINES HELIUM:
### Stocks, Receipts, and Distribution

Year 19_____

To: Bureau of Mines, Helium Operations,
Department of the Interior
1100 South Fillmore Street
Amarillo, Texas 79101

"The Paperwork Reduction Act of 1980 (44 U.S.C. 35) requires us to inform you that: This information is being collected for the purpose of distributor accountability and certification of compliance with the Regulation. This information will be used to report annual sales, transfers, and purchases of Bureau helium as certification of compliance with 30 CFR 602. The obligation to respond is required to obtain a benefit."

**This report is required by contract. The Bureau of Mines may withhold deliveries under a contract or terminate a contract with a private helium distributor for failue to comply with the reporting provisions specified by contract.**

**SECTION 1. COMPANY IDENTIFICATION.**

Each distributor should prepare this report. Indicate opening stocks, receipts distribution and closing balance, in Section 2 for indicated annual period.

1. Your company name ______________________
2. Address ______________________

**SECTION 2. STOCKS, RECEIPTS, AND DISTRIBUTION FOR INDICATED ANNUAL PERIOD.**

Because sales of Bureau of Mines helium to civilian consumers are not required to be reported, the closing balance of Bureau of Mines helium may exceed the total closing helium inventory. However, it is not possible for the opening inventory of Bureau of Mines helium to exceed the total helium inventory at the beginning of a reporting period. Purchases and transfers from sources other than the Bureau of Mines must be supported by copies of certificates from suppliers. Copies of this certificate are enclosed with this mailing.

| Item<br>1 | | Liquid and Gaseous Helium Standard Cubic Feet 1/<br>2 |
|---|---|---|
| 1 Opening Inventory | | |
| (a) Carryover closing balance from previous period or total helium inventory, whichever is smaller | | ________ |
| 2 Receipts. | | |
| (a) By purchase from Bureau of Mines | ________ | |
| (b) By purchase from another distributor | ________ | |
| (c) Total receipts (equals 2 (a) plus 2 (b)) | | ________ |
| 3 Total Available for Distribution this Period (equals 1 (a) plus 2 (b)) | | ________ |
| 4 Distribution: | | |
| (a) By sale to Federal agencies | ________ | |
| (b) By certified sale to another distributor | ________ | |
| (c) Total distribution (equals 4 (a) plus 4 (b)) | | ________ |
| 5 Closing Balance (equals 3 minus 4 (c)) | | ________ |
| 6. CLOSING INVENTORY (actual helium on hand at end of period) | | ________ |

1/ Liquid helium shall be reported in gaseous helium equivalent. One liter of liquid helium is equivalent to 26.63 standard cubic feet and 1 gallon of liquid helium is equivalent to 100.82 standard cubic feet.

**CERTIFICATION**—I certify that the forgoing report is true, correct, and complete to the best of my knowledge and belief.

Name ______________________ Title ______________________

Signature ______________________ Date ______________________

| | | | | |
|---|---|---|---|---|
| Name of person to be contacted regarding this report | | Tel. area code | No. | Ext. |
| Address No. | Street | City | State | Zip |

## PART 609—PAYMENTS REQUIRED FROM OWNERS OF PRIVATE LANDS UPON WHICH THE BUREAU OF MINES PERFORMS EXPLORATION OR DEVELOPMENT WORK TO INVESTIGATE KNOWN COAL DEPOSITS

### § 609.1 Reasonable percentage determined.

It is hereby determined that 5 mills per ton of 2,000 pounds of coal is a reasonable percentage of the total value of minerals that may be produced from private property upon which the Bureau of Mines performs exploration or development work to investigate known coal deposits, to be paid by owners of such property.

(60 Stat. 373)

[11 FR 14485, Dec. 18, 1946. Redesignated at 39 FR 23997, June 28, 1974]

# SUBCHAPTERS B—L [RESERVED]

# SUBCHAPTER M—RULES AND REGULATIONS FOR THE ADMINISTRATION OF GRANTS

## PART 651—BUREAU OF MINES GRANT PROGRAMS

**Subpart A—General**

Sec.
651.1 Scope.
651.1-1 Purpose—General programs.
651.1-2 Purpose—Solid waste disposal.
651.1-3 Purpose—Coal Mine Health and Safety.
651.2 Delegation of authority for Administration.
651.3 Definitions.
651.4 Purpose of making, and entities eligible to receive grants.
651.4-1 Public Law 85-934, 72 Stat. 1793, 42 U.S.C. 1891.
651.4-2 The Solid Waste Disposal Act.
651.4-3 The Federal Coal Mine Health and Safety Act of 1969.

**Subpart B—Applications for Grants**

651.5 Submission of applications.

**Subpart C—Approval of Applications and Limitations**

651.6 Return of defective applications.
651.6-1 Return of defective applications submitted pursuant to §§ 651.1-1 and 651.1-2.
651.6-2 Defective applications and modifications submitted pursuant to § 651.1-3.
651.7 Requirements for approval.
651.8 Limitations.
651.9 Appeals from decisions affecting applications made pursuant to § 651.1-3.

**Subpart D—Progress and Accomplishment Reports**

651.10 Reports—general.
651.11 Reports—special.
651.12 Acknowledgment of Federal government participation.

**Subpart E—Consultation and Coordination**

651.13 Cooperation.
651.13-1 Cooperation on grants made pursuant to §§ 651.1-1 and 651.1-2.
651.13-2 Cooperation on grants made pursuant to § 651.1-3.
651.14 Advice, assistance, and coordination.

Sec.

**Subpart F—Fiscal and Accounting**

651.15 Procedure for obtaining payments.
651.16 Cost computation principles for grants made pursuant to §§ 651.1-1 and 651.1-2.
651.17 Title to property.
651.18 Accounting records.

**Subpart G—Audits and Inspections**

651.19 Introduction.
651.20 Audits.
651.21 Inspection.
651.22 Covenants on grants made pursuant to § 651.1-3.

AUTHORITY: Solid Waste Disposal Act, Pub. L. 89-272, 71 Stat. 998-999 (42 U.S.C. 3253, 3255); Pub. L. 85-934, 72 Stat. 1793 (42 U.S.C. 1891-1893); and the Federal Coal Mine Health and Safety Act of 1969), Pub. L. 91-173, 83 Stat. 742, (30 U.S.C. 482)

SOURCE: 36 FR 23366, Dec. 9, 1971, unless otherwise noted. Redesignated at 39 FR 23997, June 28, 1974.

## Subpart A—General

### § 651.1 Scope.

The regulations contained in this part are issued pursuant to Pub. L. 85-934 (72 Stat. 1793, 42 U.S.C. 1891), the Solid Waste Disposal Act of 1965 (Pub. L. 89-272) and the Federal Coal Mine Health and Safety Act of 1969 (Pub. L. 91-173, 83 Stat. 742) to provide (a) uniform procedures for award and administration of grants for scientific research and (b) uniform procedures for making grants to States under the provisions of section 503 of the Federal Coal Mine Health and Safety Act of 1969.

### § 651.1-1 Purpose—General programs.

Public Law 85-934 (72 Stat. 1793, 42 U.S.C. 1891) provides uniform procedures for the award and administration of grants for research in furtherance of the Bureau of Mines' programs as authorized by statute.

### § 651.1-2 Purpose—Solid waste disposal.

The Solid Waste Disposal Act of 1965 (Pub. L. 89-272) authorizes appropriations to, and confers authority upon the Secretary of the Interior in order to (a) initiate and accelerate a national research and development program for new and improved methods of proper and economic solid waste disposal, including studies directed toward the conservation of natural resources by reducing the amount of waste and unsalvageable materials and by recovery and utilization of potential resources in solid wastes; and (b) provide technical and financial assistance to State and local governments and interstate agencies in the planning, development, and conduct of solid waste disposal programs.

### § 651.1-3 Purpose—Coal Mine Health and Safety.

(a) State Coal Mine Safety Programs—The Federal Coal Mine Health and Safety Act of 1969 provides authority for contributions to be made by the Secretary of the Interior with respect to projects by States in which coal mining occurs to enlarge or intensify safety education programs or to plan and implement programs for the advancement of health and safety in coal mines under the authority of subsection (e) of section 212 of the Act.

(b) Research Grants—Section 501(c) of the Federal Coal Mine Health and Safety Act of 1969 authorizes the Secretary of the Interior to make grants for research in the field of coal mine safety.

### § 651.2 Delegation of authority for Administration.

The Secretary of the Interior has delegated to the Director, Bureau of Mines his authority under the Acts cited above to enter into grant agreements. This authority may be redelegated.

### § 651.3 Definitions.

As used in the regulations in this part and in grant agreements entered into pursuant to the regulations in this part:

(a) "Government" means the United States of America.

(b) "Secretary" means the Secretary of the Interior.

(c) "State" means a State, the District of Columbia, the Commonwealth of Puerto Rico, the Virgin Islands, Guam, and American Samoa.

(d) "Director" means the Director, Bureau of Mines.

(e) "Interstate agency" means an agency of two or more municipalities in different States, or an agency established by two or more States, with authority to provide for the disposal of solid wastes and serving two or more municipalities located in different States.

(f) "Solid waste" means refuse, and other discarded solid waste materials resulting from the extraction, processing, or utilization of minerals or fossil fuels.

(g) "Solid waste disposal" means the collection, storage, treatment, utilization, processing, or final disposal of solid waste.

(h) "Fiscal year" means a 12-month period ending on June 30.

(i) "Bureau" means the Bureau of Mines.

(j) "Applicant" means any public (whether Federal, State, interstate, or local) authority, agency, and institution, private agency and institution, and individual who files application for a grant of Federal funds.

(k) "Construction" means (1) the erection or building of new structures or the replacement, expansion, remodeling, alteration, moderation, or extension of existing structures, and (2) the acquisition and installation of initial equipment, required in connection with new or newly acquired structures or the expansion, remodeling, alteration, modernization, or extension of existing structures (including motor vehicles, tractors, cranes, and other machinery) necessary for the proper utilization and operation of the facility after completion of the project, and (3) the engineering, architectural, legal, fiscal, and economic investigations including any surveys, designs, plans, working drawings, and specifications, necessary for the carrying out of the project, and (4) for the inspection supervision of the completion of the project.

**§ 651.4 Purpose of making, and entities eligible to receive grants.**

**§ 651.4-1 Public Law 85-934, 72 Stat. 1793, 42 U.S.C. 1891.**

(a) Subject to the availability of appropriated funds, grants may be made pursuant to section 1 of Pub. L. 85-934, for the conduct of scientific or technological research into any aspect of the problems related to the programs of the Bureau which are authorized by statute.

(b) Grants may be made to nonprofit institutions of higher education, or to nonprofit organizations whose primary purpose is the conduct of scientific research.

**§ 651.4-2 The Solid Waste Disposal Act.**

(a) Research, demonstration, training, and other activities: Grants may be made pursuant to section 204 of the Solid Waste Disposal Act (Pub. L. 89-272, 79 Stat. 997), for the conduct of, and to promote the coordination of research, investigation, experiments, training, demonstration, surveys, and studies relating to the operation and financing of solid waste disposal programs, the development and application of new and improved methods of solid waste disposal (including devices and facilities therefor), and the reduction of the amount of such waste and unsalvageable waste materials.

(b) State and interstate planning: Grants, not to exceed 50 percent of the cost, may be made pursuant to section 206 of the Solid Waste Disposal Act to State and Interstate agencies for making surveys of solid waste disposal practices and problems within the jurisdictional areas of such States or agencies and for developing solid waste disposal plans for such areas.

(c) Subject to the availability of appropriated funds, grants may be made to any applicant qualified to perform the work contemplated in sections 204 and 206 of the Solid Waste Disposal Act.

**§ 651.4-3 The Federal Coal Mine Health and Safety Act of 1969.**

The Secretary (in coordination with the Secretary of Health, Education, and Welfare and the Secretary of Labor) is authorized by section 503(a) of the Coal Mine Health and Safety Act to make grants to any State in which coal mining takes place (a) to assist in developing and enforcing effective coal mine health and safety laws and regulation; (b) to improve State workmen's compensation and occupational disease laws and programs related to coal mine employment; and (c) to promote Federal-State coordination and cooperation in improving the health and safety conditions in the coal mines. In addition, grants for research in the field of coal mine safety may be made in accordance with the provisions of § 651.1-3(b).

## Subpart B—Applications for Grants

**§ 651.5 Submission of applications.**

(a) An application should be submitted in an original and four copies to the Chief, Division of Procurement and Property Management, Bureau of Mines, Department of the Interior, Washington, D.C. 20240. A separate application must be submitted for each project.

(b) Applications made pursuant to the provisions of § 651.1-1 should include a statement as to the nature of the organization, its officers, principal business, experience, and special qualifications for conducting the project for which application is being made.

(c) Applications made pursuant to the provisions of § 651.1-2 if submitted by:

(1) An individual, the application should include a statement in reasonable detail of his education, experience, accomplishments, and special qualifications for conducting the project for which application is being made.

(2) An organization, the application should include a statement as to its nature, officers, principal business, experience, and special qualifications for conducting the project for which application is being made.

(3) A State or interstate agency submitting a proposal pursuant to section 206 of the Solid Waste Disposal Act, the application must (i) designate or establish a single State agency (which may be an interdepartmental agency) or, in the case of an interstate agency, such interstate agency, as the sole

agency for carrying out the purposes of section 206 of the Solid Waste Disposal Act; (ii) indicate the manner in which provision will be made to assure full consideration of all aspects of planning essential to statewide planning (or in the case of an interstate agency jurisdiction-wide planning) for proper and effective solid waste disposal consistent with the protection of the public health, including such factors as population growth, urban and metropolitan development, land-use planning, water pollution control, air pollution control, and the feasibility of regional disposal programs; (iii) set forth the plans for expenditure of such grant, which plans provide reasonable assurance of carrying out the purposes of section 206 of the Solid Waste Disposal Act.

(d) Applications made pursuant to § 651.1-3 must be submitted through the State's official coal mine inspection or safety agency.

(1) Set forth the programs, policies, and methods to be followed in carrying out the application in accordance with the purposes of section 503(a) of the Federal Coal Mine Health and Safety Act of 1969. An application may provide for the planning of programs for the purposes and objectives of the Federal Coal Mine Health and Safety Act of 1969, and the carrying out of programs to train State coal mine inspectors;

(2) Provide for research and planning studies to carry out plans designed to improve State workmen's compensation and occupational disease laws and programs, as they relate to compensation to miners for occupationally caused diseases and injuries and arising out of employment in any coal mine;

(3) Designate the State coal mine inspection or safety agency as the sole agency responsible for administering grants under section 503 of the Federal Coal Mine Health and Safety Act of 1969 throughout the State, and contain satisfactory evidence that such agency will have the authority to carry out the purposes of section 503 of the Federal Coal Mine Health and Safety Act of 1969;

(4) Give assurance that such agency has or will employ an adequate and competent staff of trained inspectors qualified under the laws of such State to make coal mine inspections within such State;

(5) Provide for the extension and improvement of the State program for the improvement of Coal Mine Health and Safety in the State, and provide that no advance notice of an inspection will be provided anyone;

(6) Contain assurances that grants provided under section 503 of the Federal Coal Mine Health and Safety Act of 1969 will supplement, not supplant, existing State Coal Mine Health and Safety programs;

(7) Agree that the official coal mine inspection or safety agency designated pursuant to paragraph (3) of this paragraph will make the reports required by § 651.15 and that it will abide by all other terms and conditions set forth in this Part 651 and such additional conditions which the Bureau may prescribe in furtherance of, and consistent with, the purposes and objectives of section 503 of the Federal Coal Mine Health and Safety Act of 1969.

(e) Information required with application: Applications shall be in the form of proposals to undertake specific projects. Such proposals shall set forth for each project:

(1) The nature and scope of the project to be undertaken.

(2) The period during which it shall be pursued.

(3) The name and qualifications of the person who will direct the project.

(4) The number and general qualifications of the personnel who will work on the project, with the name, education, experience, and accomplishments of the principal person who will be assigned to it.

(5) The location or locations at which the project will be pursued.

(6) The importance of the project in relation to the Nation, State, or local area concerned.

(7) The relation of the project to other known research projects theretofore pursued or currently being pursued by the applicant and by others.

(8) The extent to which the project will provide opportunity for the training of personnel.

(9) The financial plan will include:

(i) The amount requested for direct expenses, by category of direct expense.

(ii) The amount requested for indirect expenses related to the requested direct expenses.

(iii) The total grant request.

(iv) The additional amount which the grantee proposes as its contribution from non-Federal sources.

(10) [Reserved]

(11) The facilities that will be devoted to the project.

(12) The salient points of the plan that will be followed in pursuing the project, including a financial plan in which expenditures are related to activity and rate of effort to be expended.

(13) The intended method of publishing the results of the project on a timely basis.

(14) The basis for a determination that the project could not be undertaken without the grant for which application is made.

(15) Assurance that, if the grant is made, the required funds from non-Federal sources will be forthcoming.

(16) Information as to whether the project or part of the project has been or will be submitted to organizations other than the Bureau for the purpose of obtaining a grant.

(17) Provision for such fiscal control and fund accounting procedures as may be necessary to comply with the requirements of this part and as may be appropriate to assure proper disbursement and accounting of grants made under this part.

## Subpart C—Approval of Applications and Limitations

### § 651.6 Return of defective application.

### § 651.6–1 Return of defective applications submitted pursuant to §§ 651.1–1 and 651.1–2.

Upon receipt of an application for a grant pursuant to Pub. L. 85-934 or Solid Waste Disposal Act, the Bureau shall determine whether the submission conforms to the requirements of § 651.5. Nonconforming submissions will be returned with statements of the reasons for their return.

### § 651.6–2 Defective applications and modifications submitted pursuant to § 651.1–3.

(a) Any application or request for renewal that does not meet all of the requirements of § 651.5 shall be returned promptly and the State shall be requested to modify, amend, or revise the application as necessary in order to meet the requirements and to resubmit the application.

(b) The Bureau will not finally disapprove any State application or modification, amendment or revision thereof without first affording the State agency reasonable notice and opportunity for a public hearing.

### § 651.7 Requirements for approval.

The Bureau may approve proposals submitted under these regulations after determining:

(a) The proposal meets the requirements of § 651.5.

(b) The applicant is a bona fide organization, individual, State, or interstate agency that has qualifications necessary to perform the work.

(c) The proposal was properly signed by the applicant or its duly authorized agent.

(d) The problems to be undertaken are related to the mission of the Department of the Interior.

(e) Such research is desirable and covers aspects not otherwise being studied.

(f) A reasonable relationship exists between the cost to the Government and the probable results to be achieved.

(g) The applicant has expressed a willingness and is legally authorized to enter into an agreement acceptable to the Bureau.

### § 651.8 Limitations.

Any grant made in accordance with these regulations shall be limited by the following provisions.

(a) The requirements of Title VI of the Civil Rights Act of 1964 (78 Stat. 252, Pub. L. 88-352) which provides that no person in the United States shall on the grounds or race, color, religion, sex, or national origin be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any program or activity receiving Federal financial assistance (sec. 601) and the implementing regulation issued by the Secretary of the Interior with the approval of the President (43 CFR Part 17).

(b) Any grant for a project which involves a federally assisted construction contact, as defined in Executive Order 11246, September 24, 1965 (30 FR 1239), shall be subject to the condition that the grantee shall comply with the requirements of said Executive Order and with applicable rules, regulations, and procedures prescribed pursuant thereto.

(c) *Grants made pursuant to § 651.11.* (1) Any grant made under Pub. L. 85-934 shall contain provisions effective to insure that all information, uses, processes, patents, and other developments resulting from any activity taken pursuant to such grant will be made readily available on fair and equitable terms in industries engaging in furnishing devices, facilities, equipment, and supplies to be used in connection with such developments. In carrying out this provision, the Bureau will make use of and adhere to the Statement of Government Patent Policy promulgated by the President's memorandum of August 23, 1971.

(2) Any grant made under Pub. L. 85-934 shall contain provisions effective to insure that the Bureau may from time to time disseminate in the form of reports of publications to public or private agencies or organizations, or individuals such information as the Bureau deems desirable on the research carried out pursuant to such grant.

(d) *Grants made pursuant to § 651.12.* (1) No grants shall be made to pay more than two-thirds of the cost of construction of any facility under the Solid Waste Disposal Act.

(2) All grants for construction under the Solid Waste Disposal Act shall be subject to the provisions of the Davis-Bacon Act, as amended (40 U.S.C. 276a to 276a-5) relating to the rates of wages paid to laborers and mechanics in connection with such construction. Wage rate determinations made by the Secretary of Labor pursuant to the Davis-Bacon Act will be provided to grantees, when applicable, by the Bureau.

(3) Any grant made under section 204 of the Solid Waste Disposal Act shall contain provisions effective to insure that all information, uses, processes, patents, and other developments resulting from any activity undertaken pursuant to such grant will be made readily available on fair and equitable terms to industries utilizing methods of solid waste disposal and industries engaging in furnishing devices, facilities, equipment, and supplies to be used in connection with solid waste disposal. In carrying out this provision, the Bureau will make use of and adhere to the Statement of Government Patent Policy promulgated by the President's memorandum of August 23, 1971.

(4) No grant shall be made under section 206 of the Solid Waste Disposal Act unless there is a satisfactory assurance that the planning of solid waste disposal will be coordinated, so far as practicable with other related State, interstate, regional, and local planning activities, including those financed in part with funds pursuant to section 701 of the Housing Act of 1954 (40 U.S.C. 461).

(e) *Grants made pursuant to § 651.15 excluding research grants.* (1) Applications will be considered only for programs that meet the purposes and objectives of section 503 of the Federal Coal Mine Health and Safety Act of 1969.

(2) Grants will be made on a fiscal year basis or portion thereof. Grants will be renewed where appropriate, but only upon receipt of a request for renewal in accordance with §§ 651.5(d) and 651.5(e).

(3) Each grant shall be covered by a grant agreement between the Government and the State. The grant agreement shall establish the purposes and objectives, and the total estimated cost of the program during the fiscal year for which the grant is to be made and the approved financial plan.

(4) The amount granted to any State for a fiscal year under this section shall not exceed 80 per centum of the amount expended by such State in such year for carrying out the approved programs. (The Bureau may al-

locate funds between States and may fix the grant at less than 80 per centum, and the percentages may be unequal between programs and between States.)

(5) None of the funds granted by the Government or provided by the State shall be used for any purpose not specifically provided in the grant instrument.

(6) Any State accepting a grant or grants under section 503 of the Federal Coal Mine Health and Safety Act shall agree that neither the Government nor any of its officers, agents, or employees shall be responsible or liable for any loss, expense, damage to property or for death or bodily injury to persons, which may arise from or be incident to any project or grant coming hereunder and the State shall agree to hold the Government and its officers, agents, or employee harmless from all such claims.

(7) Reimbursement for travel expenses shall be in accordance with the State's regular lawfully established policies and procedures, except they may not exceed those authorized in standardized Government regulations.

### § 651.9 Appeals from decisions affecting applications made pursuant to § 651.1-3.

(a) The proposed disapproval by the Bureau of any initial State application or modification for grant funds shall be given to the State by the issuance of a notice to that effect setting forth the reasons for the proposed disapproval. The State through its designated coal mine inspection or safety agency may request a public hearing within 30 days after receipt of the notice of proposed disapproval for the purpose of appealing such decision, by the mailing of a notice of appeal to the Bureau.

(b) Any decision of the Bureau finally disapproving any initial application or modification shall be final and conclusive unless the State within 30 days from the date of such decision shall file a petition in the U.S. Court of Appeals for the District of Columbia stating that such decision should be modified or set aside in whole or in part. The filing of a petition shall not stay the application of the decision of the Bureau except as ordered by the U.S. Court of Appeals for the District of Columbia.

## Subpart D—Progress and Accomplishment Reports

### § 651.10 Reports—general.

(a) Recipients of funds are encouraged to publish as technical literature, the findings, results, and conclusions relating to separately identifiable projects. Five copies of such documents shall be furnished to the Bureau together with supplementary information suitable for project documentation purposes.

(b) If a publication such as is described in paragraph (a) of this section has not been prepared with respect to a specific project, recipients of the grant funds shall, in conjunction with the completion or termination of the project, prepare a report which sets forth the findings, results, and conclusions relating to such project. Five copies of the report shall be furnished to the Bureau together with supplementary information suitable for project documentation purposes.

### § 651.11 Reports—special.

At such times and in such detail as the Bureau shall require, the recipient shall furnish to the Bureau a statement capable of being reproduced with respect to each project showing the work done, the benefits derived, the status of the project, expenditures, and amounts obligated, and such other information as may be required.

### § 651.12 Acknowledgment of Federal government participation.

(a) The grantee may publish or cause to be published data developed through the use of grant funds without prior approval of the Bureau of Mines provided that the data to be published is not subject to the patent and copyright provisions of a grant.

(b) If the grantee chooses to publish or cause to be published any data developed through the use of grant funds without Bureau of Mines approval, the following notice shall be displayed prominently on the title page of each such publication or copy thereof.

> The contents contained herein were developed through the use of funds provided by the U.S. Department of the Interior, Bureau of Mines, and by this notice the Bureau does not agree or disagree with any of the ideas expressed or implied in this publication.

Such acknowledgment shall be included in news releases, and other information media developed to publicize, describe, or report upon research activities and accomplishments carried out in whole or in part with funds received under provisions of the Act.

## Subpart E—Consultation and Coordination

### § 651.13 Cooperation.

### § 651.13-1 Cooperation on grants made pursuant to §§ 651.1-1 and 651.1-2.

The Bureau shall encourage and assist in the establishment and maintenance of cooperation by and between grantees and between them and other research organizations, the U.S. Department of the Interior, and other Federal establishments.

### § 651.13-2 Cooperation on grants made pursuant to § 651.1-3.

(a) As contemplated by the Federal Coal Mine Health and Safety Act of 1969, the Bureau will cooperate with the States in accomplishing the purposes of the grant, including but not limited to the furnishing of advice and assistance to promote the objectives of the Federal Coal Mine Health and Safety Act of 1969 and the coordination of projects.

(b) In addition to cooperating in carrying out the purposes of the grant, the Bureau shall, separate and apart therefrom, cooperate with such States when feasible and at the discretion of the Bureau in training Federal and State inspectors jointly, and in establishing a system by which State and Federal inspection reports of coal mines located in the State are exchanged for the purpose of improving health and safety conditions in such mines.

### § 651.14 Advice, assistance, and coordination.

The Bureau shall furnish such advice and assistance as it believes will best carry out the mission of the Bureau, participate in coordinating all research initiated, and indicate the lines of inquiry which seem to be most important.

## Subpart F—Fiscal and Accounting

### § 651.15 Procedure for obtaining payments.

(a) After the grant agreement has been formally signed, payments of grant funds to the grantee will be made on public vouchers prepared, signed, and submitted by the grantee in three copies to the Bureau. Such vouchers will provide for amounts to be paid to the grantee as funds are required for expenditures under an approved financial plan.

(b) In the case of lost sharing grants, the grantee will also submit evidence that a proper relationship is being maintained between expenditures of grant and non-Federal funds.

(c) When applicable, advance payments will be made under procedures prescribed by Title 31, U.S.C. section 205. Payments of grants may be made (after necessary adjustment on account of previously made underpayments or overpayments) in advance or by way of reimbursement, and in such installments and on such conditions as the Bureau may determine.

(d) On grants made pursuant to § 651.1-3: Whenever the Bureau finds there is a failure by the State to expend funds in accordance with the terms and conditions governing the Government's grant, the Bureau shall notify the State that further payments will not be made to the State until it is satisfied that there will no longer be any such failure. Until the Bureau is so satisfied, payment of any grant hereunder to the State shall be withheld.

### § 651.16 Cost computation principles for grants made pursuant to §§ 651.1-1 and 651.1-2.

(a) The cost computation principles prescribed in this section shall be utilized in the cost accounting required with respect to grants under Pub. L. 85-934 or the Solid Waste Disposal Act to provide evidence that the recipient has discharged the obligation it assumed, when accepting these funds, to expend them solely for costs necessary for the accomplishment of the work for which they were received. These principles will also be applied in accounting for costs financed with non-Federal funds where those costs pertain to programs financed in part by grants under Pub. L. 85-934 or the Solid Waste Disposal Act.

(b) Basic cost formulas: Costs will be computed:

(1) By educational institutions, in accordance with appropriate OMB circulars and Federal procurement regulations.

(2) By all entities other than educational institutions, in accordance with the Federal procurement regulations (41 CFR 1-15.2).

### § 651.17 Title to property.

(a) Title to property purchased with funds from non-Federal sources used in the research activity shall be vested in the grantee.

(b) Title to property purchased by educational or nonprofit institutions with research grant funds shall vest in the grantee at the time of purchase unless the Bureau determines that vesting title in the grantee would not further the objectives of the Bureau. (42 U.S.C. 1892).

(c) Title to property purchased by all other grantees with grant funds shall vest in the Government.

### § 651.18 Accounting records.

(a) Recipients of funds shall be responsible for maintaining books of account that clearly, accurately, and currently reflect the financial transactions involving grants financed by the Bureau and also transactions financed with matching funds from sources other than the Federal Government. In addition, they shall maintain files of all papers necessary to explain and prove the validity of the transactions recorded.

(b) Such records, with all supporting and related documents shall, at all reasonable times, be made available, upon request, for inspection and audit by representatives of the Bureau, of the Secretary and of the Comptroller General of the United States.

(c) Records relating to each grant shall be retained and made available until the expiration of 3 years after the Government's last payment to the grantee.

(d) The books and records maintained shall include a record of all property:

(1) Received from the Federal Government.

(2) Charged as a cost of activities financed with funds provided.

(3) Included in costs paid with non-Federal funds to match grant funds.

(e) An accountability record shall be maintained for all items of property that have expected useful service life or more than 1 year and have an acquisition cost of $100 or more.

(f) The grantee further agrees to include in all his subcontracts hereunder a provision to the effect that the subcontractor agrees that the Comptroller General of the United States or any of his duly authorized representatives shall, until expiration of 3 years after final payment under the subcontract, or of the time periods for the particular records specified in Part 1-20 of the Federal procurement regulations (41 CFR Part 1-20), whichever expires earlier, have access to and the right to examine any directly pertinent books, documents, papers, and records of such subcontractor, involving transactions related to the subcontract. The term "subcontract" as used in this clause excludes (1) purchase orders not exceeding $2,500 and (2) subcontracts or purchase orders for public utility services at rates established for uniform applicability to the general public.

## Subpart G—Audits and Inspections

### § 651.19 Introduction.

Representatives of the Bureau, of the Secretary, and of the Comptroller General of the United States may conduct onsite audits and inspections of grantees which have received Federal funds pursuant to Pub. L. 85-934 Solid

Waste Disposal Act, or Federal Coal Mine Health and Safety Act of 1969.

### § 651.20 Audits.

Audits conducted at the direction or on behalf of the Bureau will extend to a determination and appropriate finding of fact concerning compliance with the provisions of the grant, the regularity and accuracy of financial transactions and recording, adequacy of property accountability and internal control, and reliability of financial reporting. As a part of such audits, examinations will be made on a selective basis to determine that matching funds have been received and properly expended by recipients of matching-fund grants under Pub. L. 85-934, Solid Waste Disposal Act, or Coal Mine Health and Safety Act of 1969 and that grantees maintain a proper relationship between costs paid with funds provided. Professional audit techniques will be applied, and accepted principles of business administration will be the governing criteria.

### § 651.21 Inspection.

In relation to the substantive scientific research operations of grantees the Bureau may, with such personnel as it considers qualified and with such procedures as it determines to be suitable, perform inspections of activities authorized and financed pursuant to these regulations. Such inspections will cover acceptability of progress, consistency with approved plans, and other factors the Bureau deems important to enable it to discharge its responsibilities for achievements consistent with purposes of Pub. L. 85-934, Solid Waste Disposal Act, or Federal Coal Mine Health and Safety Act of 1969.

### § 651.22 Covenants on grants made pursuant to § 651.1-3.

(a) All grant instruments and contracts awarded thereunder by States shall contain the following provisions:

(b) The payment of any fee, commission or compensation of any kind, or the giving of any gift or gratuity of any kind, either directly or indirectly, by or on behalf of a contractor under this grant, to any officer, employee, or agent of the grantee either as an inducement for the award of a contract under the grant or as an acknowledgement of a contract previously awarded thereunder or as an inducement or acknowledgement for a determination or any other action favorable to such contractor is prohibited. Upon a showing that a contractor under this grant paid fees, commissions, or compensation, or gave gifts or gratuities to an officer, employee, or agent of the grantee in connection with the contract award or administration under the grant, it shall be conclusively presumed that the cost of such expense was included in the contract and ultimately borne or intended to be borne by the United States, in which case the Government shall withhold from sums otherwise obligated under the grant any amount found to have been paid by a contractor as a fee, commission, or compensation, or as a gift or gratuity to an officer, employee, or agent of the grantee.

## PARTS 652—699 [RESERVED]

# FINDING AIDS

A list of CFR titles, subtitles, chapters, subchapters and parts and an alphabetical list of agencies publishing in the CFR are included in the CFR Index and Finding Aids volume to the Code of Federal Regulations which is published separately and revised annually.

Table of CFR Titles and Chapters
Alphabetical List of Agencies Appearing in the CFR
Redesignation Tables
List of CFR Sections Affected

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# Table of CFR Titles and Chapters

(As of June 13, 1986)

## Title 1—General Provisions

| Chap. | |
|---|---|
| I | Administrative Committee of the Federal Register (Parts 1-49) |
| II | Office of the Federal Register (Parts 50-299) |
| III | Administrative Conference of the United States (Parts 300-399) |
| IV | Miscellaneous Agencies (Parts 400-499) |

## Title 2—[Reserved]

## Title 3—The President

| | |
|---|---|
| | Proclamations |
| | Executive Orders |
| | Other Presidential Documents |
| I | Executive Office of the President (Parts 100-199) |

## Title 4—Accounts

| | |
|---|---|
| I | General Accounting Office (Parts 1-99) |
| II | Federal Claims Collection Standards (General Accounting Office—Department of Justice) (Parts 100-299) |
| III | General Accounting Office (CASB) (Parts 300-499) |

## Title 5—Administrative Personnel

| | |
|---|---|
| I | Office of Personnel Management (Parts 1-1199) |
| II | Merit Systems Protection Board (Parts 1200-1299) |
| III | Office of Management and Budget (Parts 1300-1399) |
| IV | Advisory Committee on Federal Pay (Parts 1400-1499) |
| V | The International Organizations Employees Loyalty Board (Parts 1500-1599) |
| VII | Advisory Commission on Intergovernmental Relations (Parts 1700-1799) |
| IX | Appalachian Regional Commission (Parts 1900-1999) |
| XI | United States Soldiers' and Airmen's Home (Parts 2100-2199) |
| XIV | Federal Labor Relations Authority, General Counsel of the Federal Labor Relations Authority and Federal Service Impasses Panel (Parts 2400-2499) |

## Title 5—Administrative Personnel—Continued

| Chap. | |
|---|---|
| XV | Office of Administration, Executive Office of the President (Parts 2500—2599) |

## Title 6—[Reserved]

## Title 7—Agriculture

| | |
|---|---|
| | SUBTITLE A—Office of the Secretary of Agriculture (Parts 0-26) |
| | SUBTITLE B—Regulations of the Department of Agriculture |
| I | Agricultural Marketing Service (Standards, Inspections, Marketing Practices), Department of Agriculture (Parts 27-209) |
| II | Food and Nutrition Service, Department of Agriculture (Parts 210-299) |
| III | Animal and Plant Health Inspection Service, Department of Agriculture (Parts 300-399) |
| IV | Federal Crop Insurance Corporation, Department of Agriculture (Parts 400-499) |
| V | Agricultural Research Service, Department of Agriculture (Parts 500-599) |
| VI | Soil Conservation Service, Department of Agriculture (Parts 600-699) |
| VII | Agricultural Stabilization and Conservation Service (Agricultural Adjustment), Department of Agriculture (Parts 700-799) |
| VIII | Federal Grain Inspection Service, Department of Agriculture (Parts 800-899) |
| IX | Agricultural Marketing Service (Marketing Agreements and Orders; Fruits, Vegetables, Nuts), Department of Agriculture (Parts 900-999) |
| X | Agricultural Marketing Service (Marketing Agreements and Orders; Milk), Department of Agriculture (Parts 1000-1199) |
| XI | Agricultural Marketing Service (Marketing Agreements and Orders; Miscellaneous Commodities), Department of Agriculture (Parts 1200-1299) |
| XIV | Commodity Credit Corporation, Department of Agriculture (Parts 1400-1499) |
| XV | Foreign Agricultural Service, Department of Agriculture (Parts 1500-1599) |
| XVI | Rural Telephone Bank, Department of Agriculture (Parts 1600-1699) |
| XVII | Rural Electrification Administration, Department of Agriculture (Parts 1700-1799) |
| XVIII | Farmers Home Administration, Department of Agriculture (Parts 1800-2099) |
| XXI | Foreign Economic Development Service, Department of Agriculture (Parts 2100—2199) |
| XXII | Office of International Cooperation and Development, Department of Agriculture (Parts 2200—2299) |
| XXIV | Board of Contract Appeals, Department of Agriculture (Parts 2400-2499) |

## Title 7—Agriculture—Continued

| Chap. | |
|---|---|
| XXV | Office of the General Sales Manager, Department of Agriculture (Parts 2500-2599) |
| XXVI | Office of Inspector General, Department of Agriculture (Parts 2600-2699) |
| XXVII | Office of Information Resources Management, Department of Agriculture (Parts 2700—2799) |
| XXIX | Office of Energy, Department of Agriculture (Parts 2900-2999) |
| XXX | Office of Operations and Finance, Department of Agriculture (Parts 3000—3099) |
| XXXI | Office of Environmental Quality, Department of Agriculture (Parts 3100—3199) |
| XXXII | Office of Grants and Program Systems, Department of Agriculture (Parts 3200—3299) |
| XXXIV | Cooperative State Research Service, Department of Agriculture (Parts 3400—3499) |

## Title 8—Aliens and Nationality

| | |
|---|---|
| I | Immigration and Naturalization Service, Department of Justice (Parts 1-499) |

## Title 9—Animals and Animal Products

| | |
|---|---|
| I | Animal and Plant Health Inspection Service, Department of Agriculture (Parts 1-199) |
| II | Packers and Stockyards Administration, Department of Agriculture (Parts 200-299) |
| III | Food Safety and Inspection Service, Meat and Poultry Inspection, Department of Agriculture (Parts 300-399) |

## Title 10— Energy

| | |
|---|---|
| I | Nuclear Regulatory Commission (Parts 0-199) |
| II | Department of Energy (Parts 200-699) |
| III | Department of Energy (Parts 700-999) |
| X | Department of Energy (General Provisions) (Parts 1000-1099) |
| XV | Office of the Federal Inspector for the Alaska Natural Gas Transportation System (Parts 1500—1599) |

## Title 11—Federal Elections

| | |
|---|---|
| I | Federal Election Commission (Parts 1-9099) |

## Title 12—Banks and Banking

| | |
|---|---|
| I | Comptroller of the Currency, Department of the Treasury (Parts 1-199) |
| II | Federal Reserve System (Parts 200-299) |
| III | Federal Deposit Insurance Corporation (Parts 300-399) |
| IV | Export-Import Bank of the United States (Parts 400-499) |

## Title 12—Banks and Banking—Continued

| Chap. | |
|---|---|
| V | Federal Home Loan Bank Board (Parts 500-599) |
| VI | Farm Credit Administration (Parts 600-699) |
| VII | National Credit Union Administration (Parts 700-799) |
| VIII | Federal Financing Bank (Parts 800-899) |
| XI | Federal Financial Institutions Examination Council (Parts 1100—1199) |

## Title 13—Business Credit and Assistance

| | |
|---|---|
| I | Small Business Administration (Parts 1-199) |
| III | Economic Development Administration, Department of Commerce (Parts 300-399) |
| V | Regional Action Planning Commissions (Parts 500-599) |

## Title 14—Aeronautics and Space

| | |
|---|---|
| I | Federal Aviation Administration, Department of Transportation (Parts 1-199) |
| II | Office of the Secretary, Department of Transportation (Aviation Proceedings) (Parts 200-399) |
| III | Office of Commercial Space Transportation, Department of Transportation (Parts 400-499) |
| V | National Aeronautics and Space Administration (Parts 1200-1299) |

## Title 15—Commerce and Foreign Trade

| | |
|---|---|
| | SUBTITLE A—Office of the Secretary of Commerce (Parts 0-29) |
| | SUBTITLE B—Regulations Relating to Commerce and Foreign Trade |
| I | Bureau of the Census, Department of Commerce (Parts 30-199) |
| II | National Bureau of Standards, Department of Commerce (Parts 200-299) |
| III | International Trade Administration, Department of Commerce (Parts 300-399) |
| IV | Foreign-Trade Zones Board (Parts 400-499) |
| VI | Bureau of Industrial Economics, Department of Commerce (Parts 600—699) |
| VIII | Bureau of Economic Analysis, Department of Commerce (Parts 800-899) |
| IX | National Oceanic and Atmospheric Administration, Department of Commerce (Parts 900-999) |
| XII | United States Travel Service, Department of Commerce (Parts 1200-1299) |
| XIII | East-West Foreign Trade Board (Parts 1300-1399) |
| XIV | Minority Business Development Agency (Parts 1400—1499) |
| | SUBTITLE C—Regulations Relating to Foreign Trade Agreements |
| XX | Office of the United States Trade Representative (Parts 2000-2099) |

## Title 15—Commerce and Foreign Trade—Continued

| Chap. | |
|---|---|
| | SUBTITLE D—Regulations Relating to Telecommunications and Information |
| XXIII | National Telecommunications and Information Administration, Department of Commerce (Parts 2300-2399) |

## Title 16—Commercial Practices

| | |
|---|---|
| I | Federal Trade Commission (Parts 0-999) |
| II | Consumer Product Safety Commission (Parts 1000-1799) |

## Title 17—Commodity and Securities Exchanges

| | |
|---|---|
| I | Commodity Futures Trading Commission (Parts 1-199) |
| II | Securities and Exchange Commission (Parts 200-399) |

## Title 18—Conservation of Power and Water Resources

| | |
|---|---|
| I | Federal Energy Regulatory Commission, Department of Energy (Parts 1-399) |
| III | Delaware River Basin Commission (Parts 400-499) |
| VI | Water Resources Council (Parts 700-799) |
| VIII | Susquehanna River Basin Commission (Parts 800-899) |
| XIII | Tennessee Valley Authority (Parts 1300-1399) |

## Title 19—Customs Duties

| | |
|---|---|
| I | United States Customs Service, Department of the Treasury (Parts 1-199) |
| II | United States International Trade Commission (Parts 200-299) |
| III | International Trade Administration, Department of Commerce (Parts 300-399) |

## Title 20—Employees' Benefits

| | |
|---|---|
| I | Office of Workers' Compensation Programs, Department of Labor (Parts 1-199) |
| II | Railroad Retirement Board (Parts 200-399) |
| III | Social Security Administration, Department of Health and Human Services (Parts 400-499) |
| IV | Employees' Compensation Appeals Board, Department of Labor (Parts 500-599) |
| V | Employment and Training Administration, Department of Labor (Parts 600-699) |
| VI | Employment Standards Administration, Department of Labor (Parts 700-799) |
| VII | Benefits Review Board, Department of Labor (Parts 800-899) |
| VIII | Joint Board for the Enrollment of Actuaries (Parts 900-999) |

## Title 21—Food and Drugs

| Chap. | |
|---|---|
| I | Food and Drug Administration, Department of Health and Human Services (Parts 1-1299) |
| II | Drug Enforcement Administration, Department of Justice (Parts 1300-1399) |

## Title 22—Foreign Relations

| | |
|---|---|
| I | Department of State (Parts 1-199) |
| II | Agency for International Development, International Development Cooperation Agency (Parts 200-299) |
| III | Peace Corps (Parts 300-399) |
| IV | International Joint Commission, United States and Canada (Parts 400-499) |
| V | United States Information Agency (Parts 500-599) |
| VI | United States Arms Control and Disarmament Agency (Parts 600-699) |
| VII | Overseas Private Investment Corporation (Parts 700-799) |
| IX | Foreign Service Grievance Board Regulations (Parts 900-999) |
| X | Inter-American Foundation (Parts 1000-1099) |
| XI | International Boundary and Water Commission, United States and Mexico, United States Section (Parts 1100-1199) |
| XII | United States International Development Cooperation Agency (Parts 1200—1299) |
| XIII | Board for International Broadcasting (Parts 1300—1399) |
| XIV | Foreign Service Labor Relations Board; Federal Labor Relations Authority; General Counsel of the Federal Labor Relations Authority; and the Foreign Service Impasse Disputes Panel (Parts 1400—1499) |
| XV | African Development Foundation (Parts 1500—1599) |

## Title 23—Highways

| | |
|---|---|
| I | Federal Highway Administration, Department of Transportation (Parts 1-999) |
| II | National Highway Traffic Safety Administration and Federal Highway Administration, Department of Transportation (Parts 1200-1299) |
| III | National Highway Traffic Safety Administration, Department of Transportation (Parts 1300—1399) |

## Title 24—Housing and Urban Development

| | |
|---|---|
| | SUBTITLE A—Office of the Secretary, Department of Housing and Urban Development (Parts 0-99) |
| | SUBTITLE B—Regulations Relating to Housing and Urban Development |
| I | Office of Assistant Secretary for Equal Opportunity, Department of Housing and Urban Development (Parts 100-199) |
| II | Office of Assistant Secretary for Housing-Federal Housing Commissioner, Department of Housing and Urban Development (Parts 200-299) |

## Title 24—Housing and Urban Development—Continued

| Chap. | |
|---|---|
| III | Government National Mortgage Association, Department of Housing and Urban Development (Parts 300-399) |
| V | Office of Assistant Secretary for Community Planning and Development, Department of Housing and Urban Development (Parts 500-599) |
| VI | Office of Assistant Secretary for Community Planning and Development, Department of Housing and Urban Development (Parts 600-699) |
| VII | Office of the Secretary, Department of Housing and Urban Development (Section 8 Housing Assistance Programs and Public and Indian Housing Programs) (Parts 700-799) |
| VIII | Office of the Assistant Secretary for Housing—Federal Housing Commissioner, Department of Housing and Urban Development (Section 8 Housing Assistance Programs and Section 202 Direct Loan Program) (Parts 800-899) |
| IX | Office of Assistant Secretary for Public and Indian Housing, Department of Housing and Urban Development (Parts 900-999) |
| X | Office of Assistant Secretary for Housing—Federal Housing Commissioner, Department of Housing and Urban Development (Interstate Land Sales Registration Program) (Parts 1700-1799) |
| XI | Solar Energy and Energy Conservation Bank, Department of Housing and Urban Development (1800-1899) |
| XII | Office of Inspector General, Department of Housing and Urban Development (Parts 2000—2099) |
| XV | Mortgage Insurance and Loan Programs under the Emergency Homeowners' Relief Act, Department of Housing and Urban Development (Parts 2700-2799) |
| XX | Office of Assistant Secretary for Housing—Federal Housing Commissioner, Department of Housing and Urban Development (Parts 3200-3699) |
| XXV | Neighborhood Reinvestment Corporation (Parts 4100-4199) |

## Title 25—Indians

| | |
|---|---|
| I | Bureau of Indian Affairs, Department of the Interior (Parts 1-299) |
| II | Indian Arts and Crafts Board, Department of the Interior (Parts 300-399) |
| IV | Navajo and Hopi Indian Relocation Commission (Parts 700-799) |

## Title 26—Internal Revenue

| | |
|---|---|
| I | Internal Revenue Service, Department of the Treasury (Parts 1-699) |

## Title 27—Alcohol, Tobacco Products and Firearms

| | |
|---|---|
| I | Bureau of Alcohol, Tobacco and Firearms, Department of the Treasury (Parts 1-299) |

## Title 28—Judicial Administration

| Chap. | |
|---|---|
| I | Department of Justice (Parts 0-199) |
| III | Federal Prison Industries, Department of Justice (Parts 300-399) |
| V | Bureau of Prisons, Department of Justice (Parts 500-599) |

## Title 29—Labor

| | |
|---|---|
| | SUBTITLE A—Office of the Secretary of Labor (Parts 0-99) |
| | SUBTITLE B—Regulations Relating to Labor |
| I | National Labor Relations Board (Parts 100-199) |
| II | Bureau of Labor-Management Relations and Cooperative Programs, Department of Labor (Parts 200-299) |
| III | National Railroad Adjustment Board (Parts 300-399) |
| IV | Office of Labor-Management Standards, Department of Labor (Parts 400-499) |
| V | Wage and Hour Division, Department of Labor (Parts 500-899) |
| IX | Construction Industry Collective Bargaining Commission (Parts 900-999) |
| X | National Mediation Board (Parts 1200-1299) |
| XII | Federal Mediation and Conciliation Service (Parts 1400-1499) |
| XIV | Equal Employment Opportunity Commission (Parts 1600-1699) |
| XVII | Occupational Safety and Health Administration, Department of Labor (Parts 1900-1999) |
| XX | Occupational Safety and Health Review Commission (Parts 2200-2499) |
| XXV | Pension and Welfare Benefits Administration, Department of Labor (Parts 2500-2599) |
| XXVI | Pension Benefit Guaranty Corporation (Parts 2600-2699) |
| XXVII | Federal Mine Safety and Health Review Commission (Parts 2700-2799) |

## Title 30—Mineral Resources

| | |
|---|---|
| I | Mine Safety and Health Administration, Department of Labor (Parts 1-199) |
| II | Minerals Management Service, Department of the Interior (Parts 200-299) |
| III | Board of Surface Mining and Reclamation Appeals, Department of the Interior (Parts 300-399) |
| IV | Geological Survey, Department of the Interior (Parts 400—499) |
| VI | Bureau of Mines, Department of the Interior (Parts 600-699) |
| VII | Office of Surface Mining Reclamation and Enforcement, Department of the Interior (Parts 700-999) |

## Title 31—Money and Finance: Treasury

| | |
|---|---|
| | SUBTITLE A—Office of the Secretary of the Treasury (Parts 0-50) |
| | SUBTITLE B—Regulations Relating to Money and Finance |

## Title 31—Money and Finance: Treasury—Continued

| Chap. | |
|---|---|
| I | Monetary Offices, Department of the Treasury (Parts 51-199) |
| II | Fiscal Service, Department of the Treasury (Parts 200-399) |
| IV | Secret Service, Department of the Treasury (Parts 400-499) |
| V | Office of Foreign Assets Control, Department of the Treasury (Parts 500-599) |
| VI | Bureau of Engraving and Printing, Department of the Treasury (Parts 600-699) |
| VII | Federal Law Enforcement Training Center, Department of the Treasury (Parts 700-799) |

## Title 32—National Defense

| | |
|---|---|
| | SUBTITLE A—Department of Defense |
| I | Office of the Secretary of Defense (Parts 1-399) |
| V | Department of the Army (Parts 400-699) |
| VI | Department of the Navy (Parts 700-799) |
| VII | Department of the Air Force (Parts 800-1099) |
| | SUBTITLE B—Other Regulations Relating to National Defense |
| XII | Defense Logistics Agency (Parts 1200-1299) |
| XVI | Selective Service System (Parts 1600-1699) |
| XIX | Central Intelligence Agency (Parts 1900-1999) |
| XX | Information Security Oversight Office (Parts 2000-2099) |
| XXI | National Security Council (Parts 2100-2199) |
| XXIV | Office of Science and Technology Policy (Parts 2400—2499) |
| XXVII | Office for Micronesian Status Negotiations (Parts 2700—2799) |
| XXVIII | Office of the Vice President of the United States (Parts 2800-2899) |

## Title 33—Navigation and Navigable Waters

| | |
|---|---|
| I | Coast Guard, Department of Transportation (Parts 1-199) |
| II | Corps of Engineers, Department of the Army (Parts 200-399) |
| IV | Saint Lawrence Seaway Development Corporation, Department of Transportation (Parts 400-499) |

## Title 34—Education

| | |
|---|---|
| | SUBTITLE A—Office of the Secretary, Department of Education (Parts 1—99) |
| | SUBTITLE B—Regulations of the Offices of the Department of Education |
| I | Office for Civil Rights, Department of Education (Parts 100—199) |
| II | Office of Elementary and Secondary Education, Department of Education (Parts 200—299) |
| III | Office of Special Education and Rehabilitative Services, Department of Education (Parts 300—399) |
| IV | Office of Vocational and Adult Education, Department of Education (Parts 400—499) |

## Title 34—Education—Continued

| Chap. | |
|---|---|
| V | Office of Bilingual Education and Minority Languages Affairs, Department of Education (Parts 500—599) |
| VI | Office of Postsecondary Education, Department of Education (Parts 600—699) |
| VII | Office of Educational Research and Improvement, Department of Education (Parts 700—799) |

## Title 35—Panama Canal

| | |
|---|---|
| I | Panama Canal Regulations (Parts 1-299) |

## Title 36—Parks, Forests, and Public Property

| | |
|---|---|
| I | National Park Service, Department of the Interior (Parts 1-199) |
| II | Forest Service, Department of Agriculture (Parts 200-299) |
| III | Corps of Engineers, Department of the Army (Parts 300-399) |
| IV | American Battle Monuments Commission (Parts 400-499) |
| V | Smithsonian Institution (Parts 500-599) |
| VII | Library of Congress (Parts 700-799) |
| VIII | Advisory Council on Historic Preservation (Parts 800-899) |
| IX | Pennsylvania Avenue Development Corporation (Parts 900-999) |
| X | Commission of Fine Arts (Parts 1000-1099) |
| XI | Architectural and Transportation Barriers Compliance Board (Parts 1100-1199) |
| XII | National Archives and Records Administration (Parts 1200—1299) |

## Title 37—Patents, Trademarks, and Copyrights

| | |
|---|---|
| I | Patent and Trademark Office, Department of Commerce (Parts 1-199) |
| II | Copyright Office, Library of Congress (Parts 200-299) |
| III | Copyright Royalty Tribunal (Parts 300-399) |
| IV | Assistant Secretary for Productivity, Technology and Innovation, U.S. Department of Commerce (Parts 400-499) |

## Title 38—Pensions, Bonuses, and Veterans' Relief

| | |
|---|---|
| I | Veterans Administration (Parts 0-99) |

## Title 39—Postal Service

| | |
|---|---|
| I | United States Postal Service (Parts 1-999) |
| III | Postal Rate Commission (Parts 3000-3099) |

## Title 40—Protection of Environment

| | |
|---|---|
| I | Environmental Protection Agency (Parts 1-799) |
| V | Council on Environmental Quality (Parts 1500-1599) |

## Title 41—Public Contracts and Property Management

| Chap. | |
|---|---|
| | SUBTITLE B—Other Provisions Relating to Public Contracts |
| 50 | Public Contracts, Department of Labor (Parts 50-1-50-999) |
| 51 | Committee for Purchase from the Blind and Other Severely Handicapped (Parts 51-1-51-99) |
| 60 | Office of Federal Contract Compliance Programs, Equal Employment Opportunity, Department of Labor (Parts 60-1-60-999) |
| | SUBTITLE C—Federal Property Management Regulations System |
| 101 | Federal Property Management Regulations (Parts 101-1-101-99) |
| 105 | General Services Administration (Parts 105-1-105-999) |
| 109 | Department of Energy Property Management Regulations (Parts 109-1-109-99) |
| 114 | Department of the Interior (Parts 114-1-114-99) |
| 115 | Environmental Protection Agency (Parts 115-1—115-99) |
| 128 | Department of Justice (Parts 128-1-128-99) |
| | SUBTITLE D—Other Provisions Relating to Property Management (Reserved) |
| | SUBTITLE E—Federal Information Resources Management Regulations System |
| 201 | Federal Information Resources Management Regulation (Parts 201-1—201-99) |

## Title 42—Public Health

| | |
|---|---|
| I | Public Health Service, Department of Health and Human Services (Parts 1-199) |
| III | Saint Elizabeths Hospital, Department of Health and Human Services (Parts 300-399) |
| IV | Health Care Financing Administration, Department of Health and Human Services (Parts 400-499) |

## Title 43—Public Lands: Interior

| | |
|---|---|
| | SUBTITLE A—Office of the Secretary of the Interior (Parts 1-199) |
| | SUBTITLE B—Regulations Relating to Public Lands |
| I | Bureau of Reclamation, Department of the Interior (Parts 200-499) |
| II | Bureau of Land Management, Department of the Interior (Parts 1000-9999) |

## Title 44—Emergency Management and Assistance

| | |
|---|---|
| I | Federal Emergency Management Agency (Parts 0—399) |
| IV | Department of Commerce and Department of Transportation (Parts 400-499) |

## Title 45—Public Welfare

| Chap. | |
|---|---|
| | SUBTITLE A—Department of Health and Human Services, General Administration (Parts 1-199) |
| | SUBTITLE B—Regulations Relating to Public Welfare |
| II | Office of Family Assistance (Assistance Programs), Department of Health and Human Services (Parts 200-299) |
| III | Office of Child Support Enforcement (Child Support Enforcement Program), Department of Health and Human Services (Parts 300-399) |
| IV | Office of Refugee Resettlement, Social Security Administration, Department of Health and Human Services (Parts 400—499) |
| V | Foreign Claims Settlement Commission of the United States, Department of Justice (Parts 500-599) |
| VI | National Science Foundation (Parts 600-699) |
| VII | Commission on Civil Rights (Parts 700-799) |
| VIII | Office of Personnel Management (Parts 800-899) |
| X | Office of Community Services, Department of Health and Human Services (Parts 1000-1099) |
| XI | National Foundation on the Arts and the Humanities (Parts 1100-1199) |
| XII | ACTION (Parts 1200-1299) |
| XIII | Office of Human Development Services, Department of Health and Human Services (Parts 1300-1399) |
| XVI | Legal Services Corporation (Parts 1600-1699) |
| XVII | National Commission on Libraries and Information Science (Parts 1700-1799) |
| XVIII | Harry S. Truman Scholarship Foundation (Parts 1800-1899) |
| XX | Commission on the Bicentennial of the United States Constitution (Parts 2000-2099) |

## Title 46—Shipping

| | |
|---|---|
| I | Coast Guard, Department of Transportation (Parts 1-199) |
| II | Maritime Administration, Department of Transportation (Parts 200-399) |
| III | Coast Guard (Great Lakes Pilotage), Department of Transportation (Parts 400-499) |
| IV | Federal Maritime Commission (Parts 500—599) |

## Title 47—Telecommunication

| | |
|---|---|
| I | Federal Communications Commission (Parts 0-199) |
| II | Office of Science and Technology Policy and National Security Council (Parts 200-299) |

## Title 48—Federal Acquisition Regulations System

| | |
|---|---|
| 1 | Federal Acquisition Regulation (Parts 1—99) |
| 2 | Department of Defense (Parts 200—299) |
| 3 | Department of Health and Human Services (Parts 300—399) |

## Title 48—Federal Acquisition Regulations System—Continued

| Chap. | |
|---|---|
| 4 | Department of Agriculture (Parts 400—499) |
| 5 | General Services Administration (P[illegible] 500—599) |
| 7 | Agency for International Development (Parts 700—799) |
| 8 | Veterans Administration (Parts 800—899) |
| 9 | Department of Energy (Parts 900—999) |
| 10 | Department of the Treasury Acquisition/Procurement Regulation (Parts 1000—1099) |
| 12 | Department of Transportation (Parts 1200—1299) |
| 13 | Department of Commerce (Parts 1300—1399) |
| 14 | Department of the Interior (Parts 1400—1499) |
| 15 | Environmental Protection Agency (Parts 1500—1599) |
| 18 | National Aeronautics and Space Administration (Parts 1800—1899) |
| 19 | United States Information Agency (Parts 1900—1999) |
| 22 | Small Business Administration (Parts 2200—2299) |
| 24 | Department of Housing and Urban Development (Parts 2400—2499) |
| 25 | National Science Foundation (Parts 2500—2599) |
| 28 | Department of Justice (Parts 2800—2899) |
| 29 | Department of Labor (Parts 2900—2999) |
| 44 | Federal Emergency Management Agency (Parts 4400—4499) |
| 52 | Department of the Navy acquisition regulations (Parts 5200—5299) |
| 61 | General Services Administration Board of Contract Appeals (Parts 6100—6199) |

## Title 49—Transportation

| | |
|---|---|
| | SUBTITLE A—Office of the Secretary of Transportation (Parts 1-99) |
| | SUBTITLE B—Other Regulations Relating to Transportation |
| I | Research and Special Programs Administration, Department of Transportation (Parts 100-199) |
| II | Federal Railroad Administration, Department of Transportation (Parts 200-299) |
| III | Federal Highway Administration, Department of Transportation (Parts 300-399) |
| IV | Coast Guard, Department of Transportation (Parts 400-499) |
| V | National Highway Traffic Safety Administration, Department of Transportation (Parts 500-599) |
| VI | Urban Mass Transportation Administration, Department of Transportation (Parts 600-699) |
| VII | National Railroad Passenger Corporation (AMTRAK) (Parts 700—799) |
| VIII | National Transportation Safety Board (Parts 800-899) |
| IX | United States Railway Association (Parts 900-999) |
| X | Interstate Commerce Commission (Parts 1000-1399) |

## Title 50—Wildlife and Fisheries

| Chap. | |
|---|---|
| I | United States Fish and Wildlife Service, Department of the Interior (Parts 1-199) |
| II | National Marine Fisheries Service, National Oceanic and Atmospheric Administration, Department of Commerce (Parts 200-299) |
| III | International Regulatory Agencies (Fishing and Whaling) (Parts 300-399) |
| IV | Joint Regulations (United States Fish and Wildlife Service, Department of the Interior and National Marine Fisheries Service, National Oceanic and Atmospheric Administration, Department of Commerce); Endangered Species Committee Regulations (Parts 400-499) |
| V | Marine Mammal Commission (Parts 500-599) |
| VI | Fishery Conservation and Management, National Oceanic and Atmospheric Administration, Department of Commerce (Parts 600-699) |

## CFR Index and Finding Aids

Subject/Agency Index

List of Agency Prepared Indexes

Parallel Tables of Statutory Authorities and Rules

Acts Requiring Publication in the Federal Register

List of CFR Titles, Chapters, Subchapters, and Parts

# Alphabetical List of Agencies Appearing in the CFR

(As of June 13, 1986)

| Agency | CFR Title, Subtitle or Chapter |
|---|---|
| ACTION | 45, XII |
| Administrative Committee of the Federal Register | 1, I |
| Administrative Conference of the United States | 1, III |
| Advisory Commission on Intergovernmental Relations | 5, VII |
| Advisory Committee on Federal Pay | 5, IV |
| Advisory Council on Historic Preservation | 36, VIII |
| African Development Foundation | 22, XV |
| Agency for International Development | 22, II; 48, 7 |
| Agricultural Marketing Service | 7, I, IX, X, XI |
| Agricultural Research Service | 7, V |
| Agricultural Stabilization and Conservation Service | 7, VII |
| Agriculture Department | |
| Agricultural Marketing Service | 7, I, IX, X, XI |
| Agricultural Research Service | 7, V |
| Agricultural Stabilization and Conservation Service | 7, VII |
| Animal and Plant Health Inspection Service | 7, III; 9, I |
| Commodity Credit Corporation | 7, XIV |
| Contract Appeals, Board of | 7, XXIV |
| Cooperative State Research Service | 7, XXXIV |
| Energy, Office of | 7, XXIX |
| Environmental Quality, Office of | 7, XXXI |
| Farmers Home Administration | 7, XVIII |
| Federal Acquisition Regulation | 48, 4 |
| Federal Crop Insurance Corporation | 7, IV |
| Federal Grain Inspection Service | 7, VIII |
| Food and Nutrition Service | 7, II |
| Food Safety and Inspection Service | 9, III |
| Foreign Agricultural Service | 7, XV |
| Foreign Economic Development Service | 7, XXI |
| Forest Service | 36, II |
| General Sales Manager, Office of | 7, XXV |
| Grants and Program Systems, Office of | 7, XXXII |
| Information Resources Management, Office of | 7, XXVII |
| Inspector General, Office of | 7, XXVI |
| International Cooperation and Development Office | 7, XXII |
| Operations and Finance, Office of | 7, XXX |
| Packers and Stockyards Administration | 9, II |
| Rural Electrification Administration | 7, XVII |
| Rural Telephone Bank | 7, XVI |
| Secretary of Agriculture, Office of | 7, Subtitle A |
| Soil Conservation Service | 7, VI |
| Air Force Department | 32, VII |
| Alaska Natural Gas Transportation System, Office of the Federal Inspector | 10, XV |
| Alcohol, Tobacco and Firearms, Bureau of | 27, I |
| AMTRAK | 49, VII |
| American Battle Monuments Commission | 36, IV |
| Animal and Plant Health Inspection Service | 7, III; 9, I |
| Appalachian Regional Commission | 5, IX |
| Architectural and Transportation Barriers Compliance Board | 36, XI |

| Agency | CFR Title, Subtitle or Chapter |
|---|---|
| Arms Control and Disarmament Agency, U.S. | 22, VI |
| Army Department | 32, V |
| Engineers, Corps of | 33, II; 36, III |
| Benefits Review Board | 20, VII |
| Bicentennial of the United States Constitution, Commission on | 45, XX |
| Bilingual Education and Minority Languages Affairs, Office of | 34, V |
| Blind and Other Severely Handicapped, Committee for Purchase from | 41, 51 |
| Board for International Broadcasting | 22, XIII |
| Budget, Office of Management and | 5, III |
| Census Bureau | 15, I |
| Central Intelligence Agency | 32, XIX |
| Child Support Enforcement, Office of | 45, III |
| Civil Rights Commission | 45, VII |
| Civil Rights, Office for (Education Department) | 34, I |
| Claims Collection Standards, Federal | 4, II |
| Coast Guard | 33, I; 46, I, III; 49, IV |
| Commerce Department | 44, IV |
| Census Bureau | 15, I |
| Economic Analysis, Bureau of | 15, VIII |
| Economic Development Administration | 13, III |
| Endangered Species Committee | 50, IV |
| Federal Acquisition Regulation | 48, 13 |
| Fishery Conservation and Management | 50, VI |
| Industrial Economics, Bureau of | 15, VI |
| International Trade Administration | 15, III; 19, III |
| National Bureau of Standards | 15, II |
| National Marine Fisheries Service | 50, II, IV |
| National Oceanic and Atmospheric Administration | 15, IX; 50, II, III, IV, VI |
| National Telecommunications and Information Administration | 15, XXIII |
| Patent and Trademark Office | 37, I |
| Productivity, Technology and Innovation, Assistant Secretary | 37, IV |
| Secretary of Commerce, Office of | 15, Subtitle A |
| United States Travel Service | 15, XII |
| Commercial Space Transportation, Office of, Department of Transportation | 14, III |
| Commission on the Bicentennial of the United States Constitution | 45, XX |
| Committee for Purchase from Blind and Other Severely Handicapped | 41, 51 |
| Commodity Credit Corporation | 7, XIV |
| Commodity Futures Trading Commission | 17, I |
| Community Planning and Development, Office of Assistant Secretary for | 24, V, VI |
| Community Services, Office of | 45, X |
| Comptroller of the Currency | 12, I |
| Construction Industry Collective Bargaining Commission | 29, IX |
| Consumer Product Safety Commission | 16, II |
| Contract Appeals, Board of | 7, XXIV |
| Cooperative State Research Service | 7, XXXIV |
| Copyright Office | 37, II |
| Copyright Royalty Tribunal | 37, III |
| Council on Environmental Quality | 40, V |
| Customs Service, United States | 19, I |
| Defense Department | 32, Subtitle A |
| Air Force Department | 32, VII |
| Army Department | 32, V; 33, II; 36, III |
| Engineers, Corps of | 33, II; 36, III |
| Federal Acquisition Regulation | 48, 2 |
| Navy Department | 32, VI; 48, 52 |
| Secretary of Defense, Office of | 32, I |

| Agency | CFR Title, Subtitle or Chapter |
|---|---|
| Defense Logistics Agency | 32, XII |
| Delaware River Basin Commission | 18, III |
| Drug Enforcement Administration | 21, II |
| East-West Foreign Trade Board | 15, XIII |
| Economic Analysis, Bureau of | 15, VIII |
| Economic Development Administration | 13, III |
| Education, Department of | |
| Bilingual Education and Minority Languages Affairs, Office of | 34, V |
| Civil Rights, Office for | 34, I |
| Educational Research and Improvement, Office of | 34, VII |
| Elementary and Secondary Education, Office of | 34, II |
| Postsecondary Education, Office of | 34, VI |
| Secretary of Education, Office of | 34, Subtitle A |
| Special Education and Rehabilitative Services, Office of | 34, III |
| Vocational and Adult Education, Office of | 34, IV |
| Educational Research and Improvement, Office of | 34, VII |
| Elementary and Secondary Education, Office of | 34, II |
| Employees' Compensation Appeals Board | 20, IV |
| Employees Loyalty Board, International Organizations | 5, V |
| Employment and Training Administration | 20, V |
| Employment Standards Administration | 20, VI |
| Endangered Species Committee | 50, IV |
| Energy, Department of | 10, II, III, X; 41, 109 |
| Federal Acquisition Regulation | 48, 9 |
| Federal Energy Regulatory Commission | 18, I |
| Energy, Office of, Department of Agriculture | 7, XXIX |
| Engineers, Corps of | 33, II; 36, III |
| Engraving and Printing, Bureau of | 31, VI |
| Environmental Protection Agency | 40, I; 41, 115; 48, 15 |
| Environmental Quality, Office of (Agriculture Department) | 7, XXXI |
| Equal Employment Opportunity Commission | 29, XIV |
| Equal Opportunity, Office of Assistant Secretary for | 24, I |
| Executive Office of the President | 3, I |
| Administration, Office of | 5, XV |
| Export-Import Bank of the United States | 12, IV |
| Family Assistance, Office of | 45, II |
| Farm Credit Administration | 12, VI |
| Farmers Home Administration | 7, XVIII |
| Federal Acquisition Regulation | 48, 1 |
| Federal Aviation Administration | 14, I |
| Federal Claims Collection Standards | 4, II |
| Federal Communications Commission | 47, I |
| Federal Contract Compliance Programs, Office of | 41, 60 |
| Federal Crop Insurance Corporation | 7, IV |
| Federal Deposit Insurance Corporation | 12, III |
| Federal Election Commission | 11, I |
| Federal Emergency Management Agency | 44, I; 48, 44 |
| Federal Energy Regulatory Commission | 18, I |
| Federal Financial Institutions Examination Council | 12, XI |
| Federal Financing Bank | 12, VIII |
| Federal Grain Inspection Service | 7, VIII |
| Federal Highway Administration | 23, I, II; 49, III |
| Federal Home Loan Bank Board | 12, V |
| Federal Home Loan Mortgage Corporation | 1, IV |
| Federal Information Resources Management Regulations | 41, Subtitle E, Ch. 201 |
| Federal Inspector for the Alaska Natural Gas Transportation System, Office of | 10, XV |
| Federal Labor Relations Authority, and General Counsel of the Federal Labor Relations Authority | 5, XIV; 22, XIV |
| Federal Law Enforcement Training Center | 31, VII |
| Federal Maritime Commission | 46, IV |
| Federal Mediation and Conciliation Service | 29, XII |
| Federal Mine Safety and Health Review Commission | 29, XXVII |
| Federal Pay, Advisory Committee on | 5, IV |
| Federal Prison Industries | 28, III |

| Agency | CFR Title, Subtitle or Chapter |
|---|---|
| Federal Property Management Regulations | 41, 101 |
| Federal Property Management Regulations System | 41, Subtitle C |
| Federal Railroad Administration | 49, II |
| Federal Register, Administrative Committee of | 1, I |
| Federal Register, Office of | 1, II |
| Federal Reserve System | 12, II |
| Federal Service Impasses Panel | 5, XIV |
| Federal Trade Commission | 16, I |
| Fine Arts Commission | 36, X; 45, XXI |
| Fiscal Service | 31, II |
| Fish and Wildlife Service, United States | 50, I, IV |
| Fishery Conservation and Management | 50, VI |
| Fishing and Whaling, International Regulatory Agencies | 50, III |
| Food and Drug Administration | 21, I |
| Food and Nutrition Service | 7, II |
| Food Safety and Inspection Service | 9, III |
| Foreign Agricultural Service | 7, XV |
| Foreign Assets Control, Office of | 31, V |
| Foreign Claims Settlement Commission of United States | 45, V |
| Foreign Economic Development Service | 7, XXI |
| Foreign Service Grievance Board | 22, IX |
| Foreign Service Impasse Disputes Panel | 22, XIV |
| Foreign Service Labor Relations Board | 22, XIV |
| Foreign-Trade Zones Board | 15, IV |
| Forest Service | 36, II |
| General Accounting Office | 4, I, II, III |
| General Sales Manager, Office of | 7, XXV |
| General Services Administration | |
| Contract Appeals Board | 48, 61 |
| Federal Acquisition Regulation | 48, 5 |
| Federal Information Resources Management Regulations | 41, Subtitle E, Ch. 201 |
| Federal Property Management Regulations System | 41, 101, 105 |
| Geological Survey | 30, IV |
| Government National Mortgage Association | 24, III |
| Grants and Program Systems, Office of | 7, XXXII |
| Great Lakes Pilotage | 46, III |
| Harry S Truman Scholarship Foundation | 45, XVIII |
| Health and Human Services, Department of | 45, Subtitle A |
| Child Support Enforcement, Office of | 45, III |
| Community Services, Office of | 45, X |
| Family Assistance, Office of | 45, II |
| Federal Acquisition Regulation | 48, 3 |
| Food and Drug Administration | 21, I |
| Health Care Financing Administration | 42, IV |
| Human Development Services Office | 45, XIII |
| Public Health Service | 42, I |
| Refugee Resettlement, Office of | 45, IV |
| St. Elizabeths Hospital | 42, III |
| Social Security Administration | 20, III; 45, IV |
| Health Care Financing Administration | 42, IV |
| Housing and Urban Development, Department of | |
| Community Planning and Development, Office of Assistant Secretary for | 24, V, VI |
| Equal Opportunity, Office of Assistant Secretary for | 24, I |
| Federal Acquisition Regulation | 48, 24 |
| Government National Mortgage Association | 24, III |
| Housing—Federal Housing Commissioner, Office of Assistant Secretary for | 24, II, VIII, X, XX |
| Inspector General, Office of | 24, XII |
| Mortgage Insurance and Loan Programs Under Emergency Homeowners' Relief Act | 24, XV |
| Public and Indian Housing, Office of Assistant Secretary for | 24, IX |
| Secretary, Office of | 24, Subtitle A, VII |
| Solar Energy and Energy Conservation Bank | 24, XI |

| Agency | CFR Title, Subtitle or Chapter |
|---|---|
| Housing—Federal Housing Commissioner, Office of Assistant Secretary for | 24, II, VIII, X, XX |
| Human Development Services Office | 45, XIII |
| Immigration and Naturalization Service | 8, I |
| Indian Affairs, Bureau of | 25, I |
| Indian Arts and Crafts Board | 25, II |
| Industrial Economics, Bureau of, Commerce Department | 15, VI |
| Information Agency, United States | 22, V; 48, 19 |
| Information Resources Management, Office of, Agriculture Department | 7, XXVII |
| Information Security Oversight Office | 32, XX |
| Inspector General, Office of, Agriculture Department | 7, XXVI |
| Inspector General, Office of, Housing and Urban Development Department | 24, XII |
| Inter-American Foundation | 22, X |
| Intergovernmental Relations, Advisory Commission on | 5, VII |
| Interior Department | |
| Endangered Species Committee | 50, IV |
| Federal Acquisition Regulation | 48, 14 |
| Federal Property Management Regulations System | 41, 114 |
| Fish and Wildlife Service, United States | 50, I, IV |
| Geological Survey | 30, IV |
| Indian Affairs, Bureau of | 25, I |
| Indian Arts and Crafts Board | 25, II |
| Land Management Bureau | 43, II |
| Minerals Management Service | 30, II |
| Mines, Bureau of | 30, VI |
| National Park Service | 36, I |
| Reclamation Bureau | 43, I |
| Secretary of the Interior, Office of | 43, Subtitle A |
| Surface Mining and Reclamation Appeals, Board of | 30, III |
| Surface Mining Reclamation and Enforcement, Office of | 30, VII |
| United States Fish and Wildlife Service | 50, I, IV |
| Internal Revenue Service | 26, I |
| International Boundary and Water Commission, United States and Mexico | 22, XI |
| International Cooperation and Development Office | 7, XXII |
| International Development, Agency for | 22, II |
| International Development Cooperation Agency | 22, XII |
| International Development, Agency for | 22, II |
| International Joint Commission, United States and Canada | 22, IV |
| International Organizations Employees Loyalty Board | 5, V |
| International Regulatory Agencies (Fishing and Whaling) | 50, III |
| International Trade Administration | 15, III; 19, III |
| International Trade Commission, United States | 19, II |
| Interstate Commerce Commission | 49, X |
| Joint Board for the Enrollment of Actuaries | 20, VIII |
| Justice Department | 28, I; 41, 128 |
| Drug Enforcement Administration | 21, II |
| Federal Acquistion Regulation | 48, 28 |
| Federal Claims Collection Standards | 4, II |
| Federal Prison Industries | 28, III |
| Foreign Claims Settlement Commission of the United States | 45, V |
| Immigration and Naturalization Service | 8, I |
| Prisons, Bureau of | 28, V |
| Labor Department | |
| Benefits Review Board | 20, VII |
| Employees' Compensation Appeals Board | 20, IV |
| Employment and Training Administration | 20, V |
| Employment Standards Administration | 20, VI |
| Federal Acquisition Regulation | 48, 29 |
| Federal Contract Compliance Programs, Office of | 41, 60 |
| Federal Procurement Regulations System | 41, 50 |
| Labor-Management Relations and Cooperative Programs, Bureau of | 29, II |

| Agency | CFR Title, Subtitle or Chapter |
|---|---|
| Labor-Management Standards, Office of | 29, IV |
| Mine Safety and Health Administration | 30, I |
| Occupational Safety and Health Administration | 29, XVII |
| Pension and Welfare Benefits Administration | 29, XXV |
| Public Contracts | 41, 50 |
| Secretary of Labor, Office of | 29, Subtitle A |
| Wage and Hour Division | 29, V |
| Workers' Compensation Programs, Office of | 20, I |
| Labor-Management Relations and Cooperative Programs, Bureau of | 29, II |
| Labor-Management Standards, Office of | 29, IV |
| Land Management, Bureau of | 43, II |
| Legal Services Corporation | 45, XVI |
| Library of Congress | 36, VII |
| Copyright Office | 37, II |
| Management and Budget, Office of | 5, III |
| Marine Mammal Commission | 50, V |
| Maritime Administration | 46, II |
| Merit Systems Protection Board | 5, II |
| Micronesian Status Negotiations, Office for | 32, XXVII |
| Mine Safety and Health Administration | 30, I |
| Minerals Management Service | 30, II |
| Mines, Bureau of | 30, VI |
| Minority Business Development Agency | 15, XIV |
| Miscellaneous Agencies | 1, IV |
| Monetary Offices | 31, I |
| Mortgage Insurance and Loan Programs Under the Emergency Homeowners' Relief Act, Department of Housing and Urban Development | 24, XV |
| National Aeronautics and Space Administration | 14, V; 48, 18 |
| National Archives and Records Administration | 36, XII |
| National Bureau of Standards | 15, II |
| National Capital Planning Commission | 1, IV |
| National Commission on Libraries and Information Science | 45, XVII |
| National Credit Union Administration | 12, VII |
| National Foundation on the Arts and the Humanities | 45, XI |
| National Highway Traffic Safety Administration | 23, II, III; 49, V |
| National Labor Relations Board | 29, I |
| National Marine Fisheries Service | 50, II, IV |
| National Mediation Board | 29, X |
| National Oceanic and Atmospheric Administration | 15, IX; 50, II, III, IV, VI |
| National Park Service | 36, I |
| National Railroad Adjustment Board | 29, III |
| National Railroad Passenger Corporation (AMTRAK) | 49, VII |
| National Science Foundation | 45, VI; 48,25 |
| National Security Council | 32, XXI |
| National Security Council and Office of Science and Technology Policy | 47, II |
| National Telecommunications and Information Administration | 15, XXIII |
| National Transportation Safety Board | 49, VIII |
| Navajo and Hopi Indian Relocation Commission | 25, IV |
| Navy Department | 32, VI; 48, 52 |
| Neighborhood Reinvestment Corporation | 24, XXV |
| Nuclear Regulatory Commission | 10, I |
| Occupational Safety and Health Administration | 29, XVII |
| Occupational Safety and Health Review Commission | 29, XX |
| Overseas Private Investment Corporation | 22, VII |
| Packers and Stockyards Administration | 9, II |
| Panama Canal Regulations | 35, I |
| Patent and Trademark Office | 37, I |
| Peace Corps | 22, III |
| Pennsylvania Avenue Development Corporation | 36, IX |
| Pension Benefit Guaranty Corporation | 29, XXVI |

| Agency | CFR Title, Subtitle or Chapter |
|---|---|
| Pension and Welfare Benefits Administration, Department of Labor | 29, XXV |
| Personnel Management, Office of | 5, I; 45, VIII |
| Postal Rate Commission | 39, III |
| Postal Service, United States | 39, I |
| Postsecondary Education, Office of | 34, VI |
| President's Commission on White House Fellowships | 1, IV |
| Presidential Documents | 3 |
| Prisons, Bureau of | 28, V |
| Productivity, Technology and Innovation, Assistant Secretary (Commerce) | 37, IV |
| Property Management Regulations System, Federal | 41, Subtitle C |
| Public Contracts, Department of Labor | 41, 50 |
| Public Health Service | 42, I |
| Railroad Retirement Board | 20, II |
| Railway Association, United States | 49, IX |
| Reclamation Bureau | 43, I |
| Refugee Resettlement, Office of | 45, IV |
| Regional Action Planning Commissions | 13, V |
| Research and Special Programs Administration | 49, I |
| Rural Electrification Administration | 7, XVII |
| Rural Telephone Bank | 7, XVI |
| Saint Elizabeths Hospital | 42, III |
| Saint Lawrence Seaway Development Corporation | 33, IV |
| Science and Technology Policy, Office of | 32, XXIV |
| Science and Technology Policy, Office of, and National Security Council | 47, II |
| Secret Service | 31, IV |
| Securities and Exchange Commission | 17, II |
| Selective Service System | 32, XVI |
| Small Business Administration | 13, I; 48, 22 |
| Smithsonian Institution | 36, V |
| Social Security Administration | 20, III; 45, IV |
| Soil Conservation Service | 7, VI |
| Solar Energy and Energy Conservation Bank, Department of HUD | 24, XI |
| Soldiers' and Airmen's Home, United States | 5, XI |
| Special Education and Rehabilitative Services, Office of | 34, III |
| State Department | 22, I |
| Surface Mining and Reclamation Appeals, Board of | 30,III |
| Susquehanna River Basin Commission | 18, VIII |
| Tennessee Valley Authority | 18, XIII |
| Trade Representative, United States, Office of | 15, XX |
| Transportation, Department of | 44, IV |
| Coast Guard | 33, I; 46, I, III; 49, IV |
| Commercial Space Transportation, Office of | 14, III |
| Federal Acquisition Regulation | 48, 12 |
| Federal Aviation Administration | 14, I |
| Federal Highway Administration | 23, I, II; 49, III |
| Federal Railroad Administration | 49, II |
| Maritime Administration | 46, II |
| National Highway Traffic Safety Administration | 23, II, III; 49, V |
| Research and Special Programs Administration | 49, I |
| Saint Lawrence Seaway Development Corporation | 33, IV |
| Secretary of Transportation, Office of | 14, II; 49, Subtitle A |
| Urban Mass Transportation Administration | 49, VI |
| Travel Service, United States | 15, XII |
| Treasury Department | |
| Alcohol, Tobacco and Firearms, Bureau of | 27, I |
| Comptroller of the Currency | 12, I |
| Customs Service, United States | 19, I |
| Engraving and Printing, Bureau of | 31, VI |
| Federal Acquisition Regulation | 48, 10 |
| Federal Law Enforcement Training Center | 31, VII |
| Fiscal Service | 31, II |
| Foreign Assets Control, Office of | 31, V |

| Agency | CFR Title, Subtitle or Chapter |
|---|---|
| Internal Revenue Service | 26, I |
| Monetary Offices | 31, I |
| Secret Service | 31, IV |
| Secretary of the Treasury, Office of | 31, Subtitle A |
| United States Customs Service | 19, I |
| Truman, Harry S, Scholarship Foundation | 45, XVIII |
| United States and Canada, International Joint Commission | 22, IV |
| United States Arms Control and Disarmament Agency | 22, VI |
| United States Customs Service | 19, I |
| United States Fish and Wildlife Service | 50, I, IV |
| United States Information Agency | 22, V; 48, 19 |
| United States International Development Cooperation Agency | 22, XII |
| United States International Trade Commission | 19, II |
| United States Postal Service | 39, I |
| United States Railway Association | 49, IX |
| United States Soldiers' and Airmen's Home | 5, XI |
| United States Trade Representative, Office of | 15, XX |
| United States Travel Service | 15, XII |
| Urban Mass Transportation Administration | 49, VI |
| Veterans Administration | 38, I; 48, 8 |
| Vice President of the United States, Office of | 32, XXVIII |
| Vocational and Adult Education, Office of | 34, IV |
| Wage and Hour Division | 29, V |
| Water Resources Council | 18, VI |
| Workers' Compensation Programs, Office of | 20, I |

# Redesignation Table 1

At 47 FR 47006, Oct. 22, 1982, provisions under 43 CFR Part 3300 were redesignated as 30 CFR Part 256. For the convenience of the user, the following table shows the relationship of the old CFR section numbers under Title 43 to the new CFR section numbers in Title 30.

| Old 43 CFR Part 3300 | New 30 CFR Part 256 |
|---|---|
| Subpart 3300—Outer Continental Shelf Minerals and Rights-of-Way Management, General | Subpart A |
| Section | Section |
| 3300.0-1 | 256.1 |
| 3300.0-2 | 256.2. |
| 3300.0-3 | 256.4. |
| 3300.0-5 | 256.5. |
| 3300.0-6 | 256.7. |
| 3300.1 | 256.8. |
| 3300.2 | 256.10. |
| 3300.3 | 256.11. |
| 3300.4 | 256.13. |
| Subpart 3310—Oil and Gas Leasing | Subpart B |
| 3310.0-5 | 256.14. |
| 3310.1 | 256.16. |
| 3310.2 | 256.17. |
| 3310.3 | 256.19. |
| 3310.4 | 256.20. |
| Subpart 3312—Reports From Federal Agencies | Subpart C |
| 3312.1 | 256.22. |
| Subpart 3313—Call for Information | Subpart D |
| 3313.1 | 256.23. |
| 3313.2 | 256.25. |
| Subpart 3314—Area Identification and Tract Size | Subpart E |
| 3314.1 | 256.26. |
| 3314.2 | 256.28. |
| Subpart 3315—Lease Sales | Subpart F |
| 3315.1 | 256.29. |
| 3315.2 | 256.31. |
| 3315.3 | 256.32. |
| Subpart 3316—Issuance of Leases | Subpart G |
| 3316.1 | 256.35. |
| 3316.2 | 256.37. |
| 3316.3 | 256.38. |
| 3316.3-1 | 256.40. |
| 3316.3-2 | 256.41. |
| 3316.3-3 | 256.43. |
| 3316.3-4 | 256.44. |
| 3316.4 | 256.46. |
| 3316.5 | 256.47. |
| 3316.6 | 256.49. |
| 3316.7 | 256.50. |
| Subpart 3317—Rentals and Royalties | Subpart H |
| 3317.1 | 256.52. |
| 3317.2 | 256.53. |
| 3317.3 | 256.55. |
| 3317.4 | 256.56. |
| Subpart 3318—Bonding | Subpart I |
| 3318.1 | 256.58. |
| 3318.2 | 256.59. |
| 3318.3 | 256.61. |
| Subpart 3319—Assignments, Transfers, and Extensions | Subpart J |
| 3319.1 | 256.62. |
| 3319.2 | 256.64. |
| 3319.3 | 256.65. |
| 3319.4 | 256.67. |
| 3319.5 | 256.68. |
| 3319.6 | 256.70. |
| 3319.7 | 256.71. |
| 3319.8 | 256.73. |
| 3319.9 | 253.74. |
| Subpart 3320—Termination of Leases | Subpart K |
| 3320.1 | 256.76. |
| 3320.2 | 256.77. |
| Subpart 3321—Section 6 Leases | Subpart L |
| 3321.1 | 256.79. |
| 3321.2 | 256.80. |
| Subpart 3331—Studies | Subpart M |
| 3331.1 | 256.82. |
| Subpart 3340—Grants of Pipeline Rights-of-Way on the Outer Continental Shelf | Subpart N |
| 3340.0-1 | 256.83. |
| 3340.0-2 | 256.85. |
| 3340.0-4 | 256.86. |
| 3340.0-5 | 256.88. |
| 3340.1 | 256.89. |

| Old 43 CFR Part 3300 | New 30 CFR Part 256 |
|---|---|
| 3340.2 | 256.91. |
| 3340.2-1 | 256.92. |
| 3340.2-2 | 256.94. |
| 3340.3 | 256.95. |
| 3340.4 | 256.97. |
| 3340.5 | 256.98. |
| 3340.6 | 256.100. |
| 3340.7 | 256.101. |
| Appendix A | Appendix A. |

# Redesignation Table 2

Secretarial Order No. 3087 dated December 3, 1982, as amended, declared that all functions related to royalty and mineral revenue management are the responsibility of the Minerals Management Service (MMS) and that all onshore minerals management functions on Federal and Indian lands are transferred to the Bureau of Land Management (BLM).

For the convenience of the user, the following table identifies regulations that MMS will retain and administer and sets forth new subchapter, part and subpart headings that reorganize and consolidate MMS regulations in a logical manner (48 FR 35639, Aug. 5, 1983).

| Former 30 CFR section designations | New 30 CFR chapter II designations |
|---|---|
| | Subchapter A—Royalty Management |
| | Part 201—General |
| | Subpart A—General Provisions—[Reserved] |
| | Subpart B—Oil and Gas, General—[Reserved] |
| | Subpart C—Oil and Gas, Onshore |
| 221.13 | 201.100 Responsibilities of the Associate Director for Royalty Management |
| | Subpart D—Oil, Gas and Sulfur, Offshore—[Resarved] |
| | Subpart E—Coal—[Reserved] |
| | Subpart F—Other Solid Minerals—[Reserved] |
| | Subpart G—Geothermal Resources—[Reserved] |
| | Subpart H—Indian Lands—[Reserved] |
| | Part 202—Royalty Rates and Rentals |
| | Subart A—General Provisions—[Reserved] |
| | Subpart B—Oil and Gas, General—[Reserved] |
| | Subpart C—Oil and Gas, Onshore |
| 221.100 | 202.100 Production records, rentals, royalties, and payments, drainage and waste |
| 221.106 | 202.101 Measurement of oil |
| 221.107 | 202.102 Measurement of gas |
| 221.111 | 202.103 Royalty rate on oil, flat-rate leases |
| | Subpart D—Oil, Gas and Sulfur, Offshore |
| 250.65 | 202.150 Royalty on oil |
| 256.55 | 202.151 Minimum royalty |
| 256.53 | 202.152 Royalties |
| | Subpart E—Coal—[Reserved] |
| | Subpart F—Other Solid Minerals—[Reserved] |
| | Subpart G—Geothermal Resources—[Reserved] |
| | Subpart H—Indian Lands—[Reserved] |
| | Part 203—Relief or Reduction in Royalty Rates |
| | Subpart A—General Provisions—[Reserved] |
| | Subpart B—Oil and Gas, General—[Reserved] |
| | Subpart C—Oil and Gas, Onshore |
| 221.104 | 203.100 Relief from operating, royalty, and rental requirements |
| | Subpart D—Oil, Gas and Sulfur, Offshore |
| 250.21 | 203.150 Reduction of royalty or net profit share |
| | Subpart E—Coal |
| | 203.200 Royalties |
| | Subpart F—Other Solid Minerals—[Reserved] |
| | Subpart G—Geothermal Resources—[Reserved] |
| | Subpart H—Indian Lands—[Reserved] |
| | Part 206—Product Valuation |
| | Subpart A—General Provisions—[Reserved] |
| | Subpart B—Oil and Gas, General—[Reserved] |
| | Subpart C—Oil and Gas, Onshore |
| 221.102 | 206.100 Waste prevention, beneficial use |
| 221.108 | 206.101 Determination of gasoline content of natural gas |
| 221.109 | 206.102 Quality basis for computing royalties on natural gasoline, butane, propane, and other liquid hydrocarbon substances extracted from gas |
| 221.110 | 206.103 Value basis for computing royalties |
| 221.112 | 206.104 Royalty rates on oil, sliding- and step-scale leases (Public land only) |
| 221.113 | 206.105 Royalty on gas |
| 221.114 | 206.106 Royalty on casing-head or natural gasoline, butane, propane or other liquid hydrocarbon substances extracted from gas |
| 221.115 | 206.107 Royalty on drip gasoline or other natural condensate |
| | Subpart D—Oil, Gas and Sulfur, Offshore |
| 250.64 | 206.150 Value basis for computing royalties |
| 250.66 | 206.151 Royalty on unprocessed gas |
| 250.67 | 206.152 Royalty on processed gas and constituent products |
| | Subpart E—Coal—[Reserved] |
| | Subpart F—Other Solid Minerals—[Reserved] |
| | Subpart G—Geothermal Resources |
| 270.62 | 206.300 Value of geothermal production for computing royalties |
| 270.63 | 206.301 Computations of royalties |
| | Subpart H—Indian Lands—[Reserved] |

| Former 30 CFR section designations | New 30 CFR chapter II designations |
|---|---|
| | Part 210—Forms and Reports |
| | Subpart A—General Provisions—[Reserved] |
| | Subpart B—Oil and Gas, General—[Reserved] |
| | Subpart C—Oil and Gas, Onshore |
| 221.101 | 210.100 Division orders, run tickets, sales agreements or contracts. |
| 221.103 | 210.101 Sales contracts, division orders. |
| 221.118 | 210.102 Daily report of gas-producing wells (Form 9-352). |
| 221.119 | 210.103 Statement of oil and gas runs and royalties (Form 9-361 Public; Form 9-361A Indian). |
| 221.120 | 210.104 Royalty and rental remittance (Form 9-614A Indian). |
| 221.122 | 210.105 Special forms or reports. |
| | Subpart D—Oil, Gas and Sulfur, Offshore |
| 250.47 | 210.150 Sales contracts. |
| 250.94 | 210.151 Statement of oil and gas runs and royalties |
| | Subpart E—Coal—[Reserved] |
| | Subpart F—Other Solid Minerals—[Reserved] |
| | Subpart G—Geothermal |
| 270.75 | 210.300 Monthly report of sales and royalty |
| 270.49 | 210.301 Sales contracts. |
| | Subpart H—Indian Lands—[Reserved] |
| | Part 212—Records and Files Maintenance |
| | Subpart A—General Provisions—[Reserved] |
| | Subpart B—Oil and Gas, General—[Reserved] |
| | Subpart C—Oil and Gas, Onshore—[Reserved] |
| | Subpart D—Oil, Gas and Sulfur, Offshore—[Reserved] |
| | Subpart E—Coal |
| 211.66(b) | 212.200 Maintenance of and access to records. |
| | Subpart F—Other Solid Minerals—[Reserved] |
| | Subpart G—Geothermal—[Reserved] |
| | Subpart H—Indian Lands—[Reserved] |
| | Part 215—Accounting and Auditing Standards [Reserved] |
| | Part 216—Production Accounting [Reserved] |
| | Part 217—Audits and Inspections |
| | Subpart A—General Provisions—[Reserved] |
| | Subpart B—Oil and Gas, General—[Reserved] |
| | Subpart C—Oil and Gas, Onshore—[Reserved] |
| | Subpart D—Oil, Gas and Sulfur, Offshore—[Reserved] |
| | Subpart E—Coal |
| 211.101 | 217.200 Audits. |
| | Subpart F—Other Solid Minerals |
| 231.62 | 217.250 Audits. |
| | Subpart G—Geothermal—[Reserved] |
| | Subpart H—Indian Lands—[Reserved] |
| | Part 218—Collection of Royalties, Rentals, Bonuses and Other Monies Due the Federal Government |
| | Subpart A—General Provisions—[Reserved] |
| | Subpart B—Oil and Gas, General—[Reserved] |
| | Subpart C—Oil and Gas, Onshore |
| 221.105 | 218.100 Royalty and rental payments. |
| 221.121 | 218.101 Royalty and rental remittance (Navy Petroleum Reserves). |
| 221.123 | 218.102 Late payment or underpayment charges. |
| | Subpart D—Oil, Gas and Sulfur, Offshore |
| 250.49 | 218.150 Royalties, net profit shares, and rental payments. |
| 256.52 | 218.151 Rentals. |
| 250.56 | 218.152 Fishermen's Contingency Fund. |
| 251.5-5 | 218.153 Fishermen's Contingency Fund. |
| 256.56 | 218.154 Effect of suspensions on royalty and rental. |
| 256.13 | 218.155 Payment. |
| | Subpart E—Coal |
| 211.102 | 218.200 Late payment or underpayment charges. |
| | Subpart F—Other Solid Minerals—[Reserved] |
| | Subpart G—Geothermal Resources |
| 270.50(a) | 218.300 Royalty Payments. |
| 270.81 | 218.301 Late payment or underpayment charges. |
| | Subpart H—Indian Lands—[Reserved] |
| | Part 219—Distribution and Disbursement of Royalties, Rentals and Bonuses—[Reserved] |
| | Part 228—Cooperative Activities with States and Indian Tribes—[Reserved] |
| | Part 229—Delegation to States—[Reserved] |
| | Part 230—Royalty Refunds—[Reserved] |
| | Part 232—Interest Payments—[Reserved] |
| | Part 233—Escrow and Investments—[Reserved] |
| | Part 234—Bonding—Payment Liability—[Reserved] |
| | Part 241—Penalties |
| | Subpart A—General Provisions—[Reserved] |
| | Subpart B—Oil and Gas, General—[Reserved] |
| | Subpart C—Oil and Gas, Onshore |
| 221.116 | 241.100 Liquidated damages. |
| | Subpart D—Offshore Oil and Gas—[Reserved] |
| | Subpart E—Coal—[Reserved] |
| | Subpart F—Other Solid Minerals—[Reserved] |
| | Subpart G—Geothermal—[Reserved] |
| | Subpart H—Indian Lands—[Reserved] |
| | Part 242—Notices and Orders—[Reserved] |
| | Part 243—Appeals—[Reserved] |
| | Subchapter B—Offshore |
| No change | Part 250—Oil and Gas and Sulfur Operations in the Outer Continental Shelf |
| No change | Part 251—Geological and Geophysical (G&G) Explorations of the Outer Continental Shelf |
| No change | Part 252—Outer Continental Shelf (OCS) Oil and Gas Information Program |
| No change | Part 256—Outer Continental Shelf Minerals and Right-of-Way Management, General |
| No change | Part 259—Mineral Leasing: Definitions |
| No change | Part 260—Outer Continental Shelf Oil and Gas Leasing |
| | Part 265—Alaska OCS Orders—[Reserved] |
| | Part 266—Atlantic OCS Orders—[Reserved] |
| | Part 267—Gulf of Mexico OCS Orders—[Reserved] |
| | Part 268—Pacific OCS Orders—[Reserved] |
| | Subchapter C—Appeals |
| No change | Part 290—Appeals Procedures |

## List of CFR Sections Affected

All changes in this volume of the Code of Federal Regulations which were made by documents published in the FEDERAL REGISTER since January 1, 1973, are enumerated in the following list. Entries indicate the nature of the changes effected. Page numbers refer to FEDERAL REGISTER pages. The user should consult the entries for chapters and parts as well as sections for revisions.

For the period before January 1, 1973, see the "List of Sections Affected, 1949-1963 and 1964-1972," published in three separate volumes.

### 1973

(Regulations published from January 1, 1973 through June 30, 1973)

### 30 CFR

| | 38 FR Page |
|---|---|
| Chapter II | |
| 211 Heading revised | 10001 |
| 211.3 (a), (b), and (c) revised | 10001 |
| 211.3a Added | 10001 |
| 211.4 Heading and (g) revised; introductory text and (f) amended | 10001 |
| 211.5 Revised | 10001 |
| 211.7 Amended | 10001 |
| 211.8 Amended | 10001 |
| 211.9—211.14 Removed | 10001 |
| 211.16 (b) amended | 10001 |
| 211.19 Amended | 10001 |
| 211.20 Amended | 10001 |
| 211.22 (b) amended | 10001 |
| 211.23 Amended | 10001 |
| 211.25 (f) amended | 10001 |
| 211.26 (a) and (b) amended | 10001 |
| 211.28—211.47 Removed | 10001 |
| 211.48 (a), (b), (c), and (d) amended | 10001 |
| 211.50 (b) amended | 10001 |
| 211.51 (a) amended | 10001 |
| 211.52—211.62 Removed | 10001 |
| 211.65—211.110 Removed | 10001 |
| 216 Heading revised | 10001 |
| 216.2 Amended | 10002 |
| 216.3 Revised | 10002 |
| 216.5 Amended | 10002 |
| 216.6—216.10 Removed | 10002 |
| 216.11 Amended | 10002 |
| 221.2 (b) and (c) revised | 10002 |
| 221.3 Revised | 10002 |
| 221.14 Amended | 10002 |

### 30 CFR—Continued

| | 38 FR Page |
|---|---|
| Chapter II—Continued | |
| 221.17 Revised | 10002 |
| 221.66 Revised | 10002 |
| 223.7 Revised | 10002 |
| 225.2 (c), (d), and (e) revised | 10002 |
| 225.5 Amended | 10002 |
| 225.6 Amended | 10002 |
| 225.7 Amended | 10002 |
| 225a.2 (d) and (e) revised | 10003 |
| 225a.6 Amended | 10003 |
| 225a.7 Amended | 10003 |
| 225a.8 Amended | 10003 |
| 226.2 (m) revised | 10003 |
| 226.2a Added | 10003 |
| 226.9 (a) revised | 10003 |
| 226.11 Revised | 10003 |
| 231.2 (c) revised | 10003 |
| 231.3 (c) (3) and (4) revised; (g) added | 10003 |
| 231.4 (b) revised | 10003 |
| 231.74 Revised | 10003 |
| 250.2 (b) and (c) revised | 10003 |
| 250.10 Revised | 10004 |
| 250.51 Amended | 10004 |
| 250.81 Revised | 10004 |
| 290 Added | 10004 |
| Chapter V | |
| Technical amendment | 10927 |

### 1973–1974

(Regulations published from July 1, 1973 through June 30, 1974)

### 30 CFR

| | 38 (39*) FR Page |
|---|---|
| Chapter II | |
| 270 Added | 35068 |

NOTE: Asterisk (*) refers to 1974 page numbers.

## 30 CFR—Continued

38 (39*) FR Page

Chapter II—Continued
271 Added ..... 35073

Chapter V
504 Added ..... 29292
504.1 Corrected ..... 29881
505.10 Revised ..... 29076
505.12 Revised ..... 30259
505.53 Revised ..... 29076

Chapter VI
Chapter established ..... *23997
Subchapter A (Parts 601, 602, 609, and 610) redesignated from Subchapter A (Parts 1, 2, 9, and 10) ..... *23997
601.3 (c) amended ..... *23997
601.6 (a) and (e) amended ..... *23997
601.10 (c) amended ..... *23997
601.15 Amended ..... *23997
602.4 (g) amended ..... *23997
602.5 Amended ..... *23997
610.3 (b) amended ..... *23997
Subchapter K (Parts 640-642) redesignated from Subchapter K (Parts 40-42) ..... *23997
640 Removed ..... *23997
Subchapter M (Part 651) redesignated from Subchapter M (Part 51) ..... *23997
651.4-3 Amended ..... *23997
651.5 (b), (c), (d) introductory text, and (d)(7) amended ..... *23997
651.6-1 Heading and text amended ..... *23997
651.6-2 Heading and (a) amended ..... *23997
651.7 (a) amended ..... *23997
651.8 (c) introductory text, (d) introductory text, (e) introductory text, and (e)(2) amended ..... *23997
651.9 Heading amended ..... *23997
651.13-1 Heading amended ..... *23997
651.13-2 Heading amended ..... *23997
651.15 (d) amended ..... *23997
651.16 Heading amended ..... *23997
651.22 Heading amended ..... *23997

## 1974–1975

(Regulations published from July 1, 1974 through June 30, 1975)

### 30 CFR

39 (40†) FR Page

Chapter II
250.19 (a) revised ..... 45015

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NOTE: Asterisk (*) refers to 1974 page numbers.
NOTE: Symbol (†) refers to 1975 page numbers.

## 30 CFR—Continued

39 (40†) FR Page

Chapter V
506 Added ..... †7292

Chapter VI
601 Appendix revised ..... †11721

## 1975–1976

(Regulations published from July 1, 1975 through June 30, 1976)

### 30 CFR

40 (41Δ) FR Page

Chapter II
211 Revised ..... Δ20261
216 Removed ..... Δ20272
225.3 Revised ..... Δ18073
250 Technical correction ..... Δ27319
205.34 Revised ..... 51200
250.97 Revised ..... Δ25893
251 Added ..... Δ25893
Technical correction ..... Δ27319

Chapter IV
Chapter removed ..... 46309
400 Removed ..... 46309

Chapter V
Chapter removed ..... Δ24779

## 1976–1977

(Regulations published from July 1, 1976 through June 30, 1977)

### 30 CFR

41 (42**) FR Page

Chapter II
211.1 (b) amended ..... **4441
211.2 (r) revised; (s) amended ..... **4441
211.5 (c)(1)(i) revised ..... **4441
211.10 (e) added ..... **3643
(a)(1) and (c)(6) revised; (d)(1) amended ..... **4441
(e)(3) added ..... **18066
(e)(2) added ..... **18068
(e)(4) added ..... **18071
(e)(5) added ..... **30175
(e)(6) added ..... **32778
211.40 (a)(2) and (14)(ii) revised ..... 53793
(a)(12)(iii) added ..... **4441
211.74 (e) revised ..... 53793
(g) added ..... **3643

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NOTE: Symbol (Δ) refers to 1976 page numbers.
NOTE: Symbol (**) refers to 1977 page numbers.

## 30 CFR—Continued

41 (42**) FR Page

Chapter II—Continued

(g)(3) added .......... **18066
(g)(2) added .......... **18068
(g)(4) added .......... **18071
(g)(5) added .......... **30175
(g)(6) added .......... **32778
211.76 Added .......... 53793
211.76-1 Added .......... **30175
211.77 Added .......... **3644
(c) added .......... **18066
(b) added .......... **18068
(d) added .......... **18071
(e) added .......... **30175
(f) added .......... **32778
250.12 (d) revised .......... 53016
251 Technical correction .......... 27319

## 1977–1978

(Regulations published from July 1, 1977 through June 30, 1978)

## 30 CFR

42 (43†) FR Page

Chapter II

231 2 (j) revised .......... †10341
231.3 (c)(9) added .......... †10341
231.61 Revised .......... †10341
250.12 (c) revised .......... 53957
250.30 Revised .......... 53958
250.34—250.34-4 Revised .......... †3883
252 Added .......... †3889
270.2 (p) and (q) added .......... †13833
270.11 Revised .......... †13833
270.34 Revised .......... †13833
270.35 Revised .......... †13834
270.78 Revised .......... †13834

Chapter VI

601 Appendix revised .......... 55208, 59670

## 1978–1979

(Regulations published from July 1, 1978 through June 30, 1979)

## 30 CFR

43 (44Δ) FR Page

Chapter II

211.1 (a) revised; (g) and (h) added .......... 37186
211.2 Revised .......... 37186
211.3 Revised .......... 37187
211.4 (a), (d), (e), and (f) revised .......... 37188
211.5 Revised .......... 37189

NOTE: Symbol (**) refers to 1977 page numbers.
NOTE: Symbol (†) refers to 1978 page numbers.
NOTE: Symbol (Δ) refers to 1979 page numbers.

## 30 CFR—Continued

43 (44Δ) FR Page

Chapter II—Continued

211.10 (a), (c)(6)(xii) and (7)(vi), and (d) revised; (f) and (g) added .......... 37189
(e)(5) revised .......... Δ33640
(e)(2) revised .......... Δ33649
(e)(1) revised .......... Δ33656
211.11 Revised .......... 37190
211.12 (a) and (d) revised .......... 37191
211.13 Revised .......... 37191
211.21 (a) and (c) revised .......... 37191
211.30 Revised .......... 37191
211.31 (c) revised .......... 37191
211.36 Revised .......... 37191
211.40 Revised .......... 37191
211.41 (a), (c), and (d) revised .......... 37194
211.62 Revised .......... 37194
211.70 Revised .......... 37195
211.72 Revised .......... 37195
211.73 Revised .......... 37196
211.74 Removed .......... 37196
211.75 Revised .......... 37196
(c)(3) revised .......... 49009
211.76 Removed .......... Δ33657
211.76-1 Removed .......... Δ33641
211.77 (e) revised .......... Δ33641
(b) revised .......... Δ33649
Revised .......... Δ33657
211.78 Added .......... 37196
250.34 Temporary suspension in part .......... 50903
250.34-1 Temporary suspension in part .......... 50903
250.34-2 Temporary suspension in part .......... 50903
250.34-3 Temporary suspension in part .......... 50903
250.34-4 Temporary suspension in part .......... 50903
270.1 Revised .......... Δ37588
270.2 (o) revised; (r) through (w) added .......... Δ37588
270.10 Revised .......... Δ37589
270.11 Revised .......... Δ37589
270.12 Revised .......... Δ37589
270.31 Existing text designated as (a); (b) added .......... Δ37589
270.34-1 Added .......... Δ37590
270.34 Amended .......... Δ37590
270.42 Revised .......... Δ37590
270.50 Existing text designated as (a); (b) added .......... Δ37590
270.71-1 Added .......... Δ37591
270.74-1 Added .......... 37592

## 30 CFR—Continued

| | 43 (44Δ) FR Page |
|---|---|
| Chapter III | |
| Chapter heading revised | 41973 |
| 301 Revised | 41974 |
| 302 Removed | 41974 |
| Chapter VI | |
| 610 Removed | 35477 |
| Technical correction | 43459 |
| 651 Interpretation | Δ28592 |

## 1979–1980

(Regulations published from July 1, 1979 through June 30, 1980)

## 30 CFR

| | 44 (45*) FR Page |
|---|---|
| Chapter II | |
| 211.2 Amended | *41410 |
| 211.10 (e)(4) revised | *5534 |
| 211.77 (d) revised | *5534 |
| 221.2 (c) note added | *41410 |
| 223.2 Note added | *41411 |
| 225.2 (c) note added | *41411 |
| 225a.2 (d) note added | *41411 |
| 226.2 (m) note added | *41411 |
| 231.2 (c) note added | *41411 |
| 241.4 Note added | *41411 |
| 250.1—250.33 Revised | 61892 |
| 250.2 (tt) through (ggg) added | *15143 |
| (d), (w), (y), (bb), (cc), (ii), and (qq) corrected | *20464 |
| (hhh) through (iii) added | *29285 |
| (hhh) through (lll) correctly designated | *37818 |
| 250.4 (a) corrected | *20464 |
| 250.11 (a)(6) correctly added; (b) corrected | *20464 |
| 250.12 (d)(1), (e), and (g) corrected | *20464 |
| 250.18 (c) corrected | *20464 |
| 250.19 Corrected | *20464 |
| 250.21 (b) corrected | *20464 |
| 250.30 (b) corrected | *20464 |
| 250.34 Revised | 53693 |
| 250.34-1 Revised | 53693 |
| (a)(1) introductory text, (ii), and (v), (6)(ii), (b)(3), (g), and (k) corrected | *20464 |
| 250.34-2 Revised | 53695 |
| (a)(1)(ii), (3)(i) and (ii), (6)(ii), (c)(3)(i), (h), (i)(2), and (n) corrected | *20465 |
| (n) corrected | *37818 |
| 250.34-3 Revised | 53698 |
| (a)(4) and (b)(4) added | *15143 |

## 30 CFR—Continued

| | 44 (45*) FR Page |
|---|---|
| Chapter II—Continued | |
| 250.34-4 Revised | 53700 |
| 250.35—250.96 Revised | 61892 |
| 250.36 (a) corrected | *20465 |
| 250.37 (a) corrected | *20465 |
| 250.38 (a) corrected | *20465 |
| 250.41 (a)(1) corrected | *20465 |
| 250.45 (a)(1) corrected | *20465 |
| 250.50 Correctly reinstated | *20465 |
| Revised | *29285 |
| 250.51 Correctly reinstated | *20465 |
| Revised | *29286 |
| 250.51-1 Added | *29286 |
| 250.51-2 Added | *29286 |
| 250.52 Revised | *29286 |
| 250.57 Added | *15144 |
| Model approval and request for comments | *37816 |
| 250.57-1 Added | *15144 |
| Model approval and request for comments | *37816 |
| 250.57-2 Added | *15145 |
| Model approval and request for comments | *37816 |
| 250.71 (b) corrected | *20465 |
| (b) correctly designated | *37818 |
| 250.80-1 (d) corrected | *20465 |
| (d) corrected | *37818 |
| 250.80-2 (a)(2)(i) introductory text and (D) corrected | *20465 |
| (a)(2)(i)(D) and (5) and (6) correctly designated | *37818 |
| 250.93 (d) corrected | *20465 |
| 250.97 Removed | 61892 |
| 250.100 Removed | 61892 |
| 251 Revised | *6344 |
| 252 Revised | 46408 |
| 270.2 (c) note added | *41411 |
| 271.2 (m) note added | *41411 |
| Chapter VI | |
| 601.10 (c)(1) revised | 69927 |
| 601 Appendix revised | 69927 |

## 1980–1981

(Regulations published from July 1, 1980 through June 30, 1981)

## 30 CFR

| | 45 (46†) FR Page |
|---|---|
| Chapter II | |
| 211.10 (e)(3) revised | 53130 |
| 211.67 Added; interim | 84764 |
| Effective date deferred | †10707 |
| 211.75 (c)(3) revised | 53130 |

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NOTE: Symbol (Δ) refers to 1979 page numbers.

NOTE: Symbol (*) refers to 1980 page numbers.

NOTE: Symbol (†) refers to 1981 page numbers.

## 30 CFR—Continued

45 (46†) FR Page

Chapter II—Continued

211.77 (c) revised ... 53130
221.80 Added; interim ... 84764
  Effective date deferred ... †10707
231.80 Added; interim ... 84764
  Effective date deferred ... †10707
250.18 (b) removed; (c) redesignated as (b) and revised; (d) and (e) redesignated as (c) and (d) ... 74471
250.20 Added ... 74471
250.65 (b) revised ... 81563
250.66 Revised ... 81563
  Corrected ... †19935
  Clarification ... †29932
270.81 Added; interim ... 84764
  Effective date deferred ... 10707

## 1981-1982

(Regulations published from July 1, 1981 through June 30, 1982)

## 30 CFR

46 (47Δ) FR Page

Chapter II

Chapter II Heading revised ... Δ28369
200.1 (g) removed ... 42267
211.1 (c) and (d) removed; (e) through (h) redesignated as (c) through (f) ... 48656
211.2 Nomenclature changes ... Δ28369
  Nomenclature change; amended ... Δ28370
211.3 (a)(1)(vi) removed; (a)(1)(vii) through (x) redesignated as (a)(1)(vi) through (ix) ... 48656
  (a)(1) nomenclature change; (a)(1) amended ... Δ28370
211.5 (c)(2) nomenclature changes ... Δ28369
211.10 (c)(6)(xii) and (d)(2)(i) nomenclature changes ... Δ28369
211.11 Nomenclature changes ... Δ28369
211.67 Revised ... Δ22527
221 Authority citation ... 58306
  Authority citation corrected ... Δ8175
  Supplement and clarification ... 45695
  Supplement and clarification ... Δ20762
221.1 Revised ... 58306
  Nomenclature change ... Δ28369
221.2 (a) revised; (q) added ... 58306

Note: Symbol (†) refers to 1981 page numbers.
Note: Symbol (Δ) refers to 1982 page numbers.

## 30 CFR—Continued

46 (47Δ) FR Page

Chapter II—Continued

  (c) and note nomenclature change ... Δ28369
  (b) and (c) text and note nomenclature changes; (c) text and note amended ... Δ28370
221.2-1 Added ... 44756
221.3 Nomenclature change ... Δ28369
  Nomenclature change; amended ... Δ28370
221.20 (a) revised ... 44756
  (a) nomenclature change ... Δ28370
221.64 Revised ... 58306
221.80 Revised ... Δ22527
222 Removed ... 48656
223.2 Nomenclature change ... Δ28369
  Note amended; note nomenclature change ... Δ28370
223.4 (a) nomenclature change ... Δ28369
225.2 (c) amended; (c) and note nomenclature change ... Δ28369
  (c) text and note nomenclature change; (c) note amended ... Δ28370
225.6 Nomenclature change ... Δ28369
225.7 Nomenclature change ... Δ28369
225a.2 (d) and note nomenclature change ... Δ28369
  (d) text and note nomenclature changes; (c), (d) text and note amended ... Δ28370
225a.8 Nomenclature change ... Δ28369
226.2 (m) and note nomenclature change ... Δ28369
  (m) note nomenclature changes; (l) and (m) text and note amended ... Δ28370
226.2a Nomenclature changes ... Δ28369
  Amended; nomenclature changes ... Δ28370
226.12 Nomenclature change ... Δ28369
226.16 Nomenclature change ... Δ28369
226.17 Nomenclature change ... Δ28369
229 Redesignated as Part 400 ... Δ28369
231.2 (c) revised; (c) note removed, eff. 7-6-82 ... Δ24128
  (b) and (j) nomenclature changes; (c) and (j) amended ... Δ28370
231.3 (b) and (g) removed; (c) through (f) redesignated as (b) through (e) ... 48657
  (a), (b)(3), and (b)(4) nomenclature changes ... Δ28369

## 30 CFR—Continued

Chapter II—Continued

| | 46 (47Δ) FR Page |
|---|---|
| (a), (b) (3), and (4) amended; (b) (3), and (4) nomenclature changes | Δ28370 |
| 231.4 (a) revised | 48657 |
| 231.25 Removed | 42267 |
| 231.30 Removed | 42267 |
| 231.42 Removed | 48657 |
| 231.43 Removed | 48657 |
| 231.73 (b) and (c) revised; eff. 7-6-82 | Δ24129 |
| 231.80 Revised | Δ22528 |
| 241 Removed | 48657 |
| 250.0 Added; eff. 7-12-82 | Δ25331 |
| 250.1 Nomenclature changes | Δ28369 |
| 250.2 (n) and (nn) nomenclature changes | Δ28369 |
| 250.12 (d)(1) amended; eff. 7-12-82 | Δ25331 |
| 250.34-1 (k) amended; eff. 7-12-82 | Δ25331 |
| 250.34-2 (n) amended; eff. 7-12-82 | Δ25331 |
| (q) nomenclature changes | Δ28369 |
| 250.39 (a) amended; eff. 7-12-82 | Δ25331 |
| 250.49 Revised | Δ22528 |
| Nomenclature changes | Δ28369 |
| 250.50 (b) and (e) amended; (g), (h), and (i) revised; (j) removed | Δ6621 |
| 250.58 Added; eff. 7-12-82 | Δ25331 |
| 250.70 Nomenclature changes | Δ28369 |
| 250.71 (a) nomenclature changes | Δ28369 |
| 250.80-1 (a)(1), (n)(1), and (o)(2) nomenclature changes | Δ23339 |
| (a)(1) amended | Δ28370 |
| 251.0 Added; eff. 7-12-82 | Δ25331 |
| 251.2 (k) nomenclature changes | Δ28369 |
| 251.5-3 (a)-(d) nomenclature changes | Δ28369 |
| 251.6-5 Revised | Δ15782 |
| 251.11 (b)(2) nomenclature changes | Δ28369 |
| 251.13 Revised; eff. 7-12-82 | Δ25331 |
| 252.1 Nomenclature changes | Δ28369 |
| 252.2 (h) nomenclature changes | Δ28370 |
| 252.3 (d) nomenclature changes | Δ28370 |
| 252.4 (a) nomenclature changes | Δ28370 |

## 30 CFR—Continued

Chapter II—Continued

| | 46 (47Δ) FR Page |
|---|---|
| 252.5 (b) nomenclature changes | Δ28370 |
| 270.1 Amended | Δ28370 |
| 270.2 (c) text and note, and (l) nomenclature changes; (b), (c) text and note and (l) amended | Δ28370 |
| 270.2-1 Added; eff. 7-6-82 | Δ24130 |
| 270.34 (k) revised; undesignated text following (k) amended; eff. 7-6-82 | Δ24130 |
| 270.50 (a) nomenclature changes | Δ28370 |
| 270.76 Removed | 42267 |
| 270.77 Revised; eff. 7-6-82 | Δ24130 |
| 270.81 Revised | Δ22528 |
| 271.2 (m) and note nomenclature changes; (l), (m) text and note amended | Δ28370 |
| 271.8 (c) nomenclature changes | Δ28370 |
| 271.12 Nomenclature changes; amended | Δ28370 |
| 271.16 Nomenclature changes | Δ28370 |
| 271.17 Nomenclature changes | Δ28370 |
| 290.1 Nomenclature changes; amended | Δ28370 |
| 290.2 Nomenclature changes; amended | Δ28370 |
| 290.3 Nomenclature changes | Δ28370 |
| 290.4 Nomenclature changes | Δ28370 |
| 290.5 Nomenclature changes | Δ28370 |
| 290.6 Nomenclature changes | Δ28370 |
| 290.7 Nomenclature changes | Δ28370 |

Chapter IV

| | |
|---|---|
| Chapter established | Δ28369 |
| 400 Redesignated from Part 229 | Δ28369 |

Chapter VI

| | |
|---|---|
| 601 Revised | 37506 |
| 602 Revised | 60436 |

### 1982

(Regulations published from July 1, 1982 through December 31, 1982)

## 30 CFR

Chapter II

| | 47 FR Page |
|---|---|
| 211 Inactive lease accounts policy | 29845, 33265 |
| Revised | 53179 |

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NOTE: Symbol (Δ) refers to 1982 page numbers.

## 30 CFR—Continued

Chapter II—Continued

| | 47 FR Page |
|---|---|
| Authority citation corrected | 53366 |
| 211.2 (a)(1), (7) and (38) corrected; (a)(26) and (27) correctly designated as (27) and (26) | 53366 |
| 211.4 (f) corrected | 53366 |
| 211.6 (a)(4) corrected | 53366 |
| 211.10 (b) introductory text corrected | 53366 |
| 211.11 (a)(3) corrected | 53366 |
| 211.20 (b)(1) corrected | 53366 |
| 211.22 (b) introductory text and (3) corrected | 53366 |
| 211.23 (c) introductory text corrected | 53366 |
| 211.40 (b)(1) corrected | 53366 |
| 211.70 (b) corrected | 53367 |
| 211.72 (c) corrected | 53367 |
| 211.102 (a) and (e) corrected | 53367 |
| 221 Inactive lease accounts policy | 29845, 33265 |
| Authority citation | 42570 |
| Heading revised | 47765 |
| 221.1—221.36 Revised | 47766 |
| 221.2 (p) revised | 42570 |
| 221.37 Revised; interim | 46239 |
| Removed | 52396 |
| 221.50—221.123 Revised | 47771 |
| 231 Authority citation | 42570 |
| Inactive lease accounts policy | 29845, 33265 |
| 231.1 (a) and cross reference revised | 42570 |
| 250 Inactive lease accounts policy | 29845, 33265 |
| Technical correction | 34134 |
| 250.0 (b) added | 30057 |
| 250.12 (b)(1) and (3)(iii) revised | 30057 |
| 251 Technical correction | 34134 |
| 256 Redesignated from 43 CFR Part 3300 | 47006 |
| Nomenclature | 47007 |
| 256.5 (b) and (e) revised | 47007 |
| 256.10 (a) and (b) amended | 47007 |
| 256.14 Correctly redesignated from 43 CFR 3310.0-5 | 50684 |
| 256.16 Correctly redesignated from 43 CFR 3310.1 | 50684 |
| 256.17 Correctly redesignated from 43 CFR 3310.2 | 50684 |
| 256.19 Correctly redesignated from 43 CFR 3310.3 | 50684 |
| 256.20 Correctly redesignated from 43 CFR 3310.4 | 50684 |
| 256.22 Amended | 47007 |
| 256.23 (b) revised | 47007 |

## 30 CFR—Continued

Chapter II—Continued

| | 47 FR Page |
|---|---|
| 256.26 (a) amended | 47007 |
| 256.41 (a) amended | 47007 |
| 256.86 Removed | 47007 |
| 256.92 (e)(1) amended | 47007 |
| 270 Inactive lease accounts policy | 29845, 33265 |

## 1983

## 30 CFR

Chapter II

| | 48 FR Page |
|---|---|
| 200 Responsibility and authority transferred | 8982 |
| Removed | 44795 |
| 201—243 (Subchapter A) Heading added | 35641 |
| 201 Redesignated from 221.13 | 35641 |
| Authority citation | 35642 |
| 202 Added; redesignated from 221.100, 221.106, 221.107, 221.111, 250.65, 256.53, and 256.55 | 35641 |
| Authority citation | 35642 |
| 203 Added; redesignated from 221.104 and 250.21 | 35641 |
| Authority citation | 35642 |
| 203.200 (Subpart E) Heading added | 35641 |
| 203.200 Added | 35642 |
| 206 Added; redesignated from sections of Parts 221, 250, and 270 | 35641 |
| Authority citation | 35642 |
| 207 Redesignated from Part 223 | 35642 |
| 208 Redesignated from Part 225 | 35642 |
| 209 Redesignated from Part 262 | 35642 |
| 210 Added; redesignated from sections of Parts 221, 250, and 270 | 35641 |
| Authority citation | 35642 |
| 210.10 Added | 43323 |
| 211 GMO No. 1 revoked | 5902 |
| Responsibility and authority transferred | 8982 |
| Redesignated as 43 CFR Part 3480 | 41589 |
| 211.2-1 Redesignated as 43 CFR Part 3480 Note and amended | 41589 |
| 211.66 (b) redesignated as 212.200 (Subpart E) | 35641 |

## 30 CFR—Continued

Chapter II—Continued

| | 48 FR Page |
|---|---|
| 211.101 Redesignated as 217.200 (Subpart E) | 35641 |
| 211.102 Redesignated as 218.200 (Subpart E) | 35641 |
| 212 Redesignated from 211.66(b) | 35641 |
| Authority citation | 35642 |
| 215 Heading added | 35641 |
| 216 Heading added | 35641 |
| 217 Added; redesignated from 211.101 and 231.62 | 35641 |
| Authority citation | 35642 |
| 218 Added; redesignated from sections of Parts 211, 221, 250, 251, 256, and 270 | 35641 |
| Authority citation | 35642 |
| 219 Heading added | 35641 |
| 220 Redesignated from Part 261 | 35642 |
| 221 Responsibility and authority transferred | 8982 |
| Redesignated as 43 CFR Part 3160 | 36583 |
| 221.13 Redesignated as Part 201 | 35641 |
| 221.37 Added | 31803 |
| 221.100 Redesignated as 202.100 | 35641 |
| 221.101 Redesignated as 210.100 | 35641 |
| 221.102 Redesignated as 206.100 | 35641 |
| 221.103 Redesignated as 210.101 | 35641 |
| 221.104 Redesignated as 203.100 (Subpart C) | 35641 |
| 221.105 Redesignated as 218.100 | 35641 |
| 221.106 Redesignated as 202.101 | 35641 |
| 221.107 Redesignated as 202.102 | 35641 |
| 221.108 Redesignated as 206.101 | 35641 |
| 221.109 Redesignated as 206.102 | 35641 |
| 221.110 Redesignated as 206.103 | 35641 |
| 221.111 Redesignated as 202.103 | 35641 |
| 221.112 Redesignated as 206.104 | 35641 |
| 221.113 Redesignated as 206.105 | 35641 |
| 221.114 Redesignated as 206.106 | 35641 |

## 30 CFR—Continued

Chapter II—Continued

| | 48 FR Page |
|---|---|
| 221.115 Redesignated as 206.107 | 35641 |
| 221.116 Redesignated as Part 241 | 35641 |
| 221.118 Redesignated as 210.102 | 35641 |
| 221.119 Redesignated as 210.103 | 35641 |
| 221.120 Redesignated as 210.104 | 35641 |
| 221.121 Redesignated as 218.101 | 35641 |
| 221.122 Redesignated as 210.105 | 35641 |
| 221.123 Redesignated as 218.102 | 35641 |
| 223 Redesignated as Part 207 | 35642 |
| 225 Redesignated as Part 208 | 35642 |
| 225a Removed | 35642 |
| 226 Responsibility and authority transferred | 8982 |
| Revised; eff. 7-11-83 | 26766 |
| Redesignated as 43 CFR Part 3180 | 36587 |
| 228 Heading added | 35641 |
| 229 Heading added | 35641 |
| 230 Heading added | 35641 |
| 231 Responsibility and authority transferred | 8982 |
| Redesignated as 43 CFR Part 3570 | 36588 |
| 2231.62 Redesignated as 217.250 (Subpart F) | 35641 |
| 232 Heading added | 35641 |
| 233 Heading added | 35641 |
| 234 Heading added | 35641 |
| 241 Redesignated from 221.116 | 35641 |
| Authority citation | 35642 |
| 241.10 Added | 43323 |
| 242 Heading added | 35641 |
| 243 Heading added | 35641 |
| 250 Availability of manual | 1955 |
| Interpretation | 20227 |
| Interpretation corrected | 22146 |
| Interpretation | 31397, 32774 |
| 250.0 (c), (d), (e), (f), and (g) added | 43324 |
| (h) added; interim | 44777 |
| (i) added | 55567 |
| 250.21 Redesignated as 203.150 (Subpart D) | 35641 |

## 30 CFR—Continued

### Chapter II—Continued

| | 48 FR Page |
|---|---|
| 250.34-1 (a)(1) introductory text and (iv), (j)(2), and (l) amended; (a)(3), (f), and (h) revised | 55567 |
| 250.34-2 (a)(1), (3)(i), (i)(2), (l)(2), and (o) amended; (a)(2), (h), and (j) revised | 5568 |
| 250.34-3 (a) introductory text and (b) introductory text revised | 55456 |
| 250.47 Redesignated as 210.150 | 35641 |
| 250.49 Redesignated as 218.150 | 35641 |
| 250.56 Redesignated as 218.152 | 35641 |
| 250.64 Redesignated as 206.150 | 35641 |
| 250.65 Redesignated as 202.150 | 35641 |
| 250.66 Redesignated as 206.151 | 35641 |
| 250.67 Redesignated as 206.152 | 35641 |
| 250.80-2 (a)(1) revised; interim | 44777 |
| 250.94 Redesignated as 210.151 | 35641 |
| 251.0 (b) added | 37968 |
| (c) added | 43324 |
| 251.5-5 Redesignated as 218.153 | 35641 |
| (e) added | 55457 |
| 251.6-2 revised | 54008 |
| (b) introductory text revised | 55457 |
| 251.6-4 Nomenclature change | 54008 |
| 251.7-2 Revised | 37968 |
| Corrected | 40380 |
| 251.11 (a) revised | 46026 |
| 251.12 (a) revised | 46026 |
| 252.2 (e) revised | 10670 |
| 256 Note removed | 43324 |
| 256.0 Added | 43324 |
| 256.13 Revised; interim; eff. 7-11-83 | 26779 |
| Redesignated as 218.155 | 35641 |
| 256.52 Redesignated as 218.151 | 35641 |
| 256.53 Redesignated as 202.152 | 35641 |
| 256.55 Redesignated as 202.151 | 35641 |
| 256.56 Redesignated as 218.154 | 35641 |
| 259 Redesignated from 10 CFR Part 375 and revised | 1182 |
| Technical correction | 2519 |

## 30 CFR—Continued

### Chapter II—Continued

| | 48 FR Page |
|---|---|
| 260 Redesignated from 10 CFR Part 376; authority citation and text nomenclature changes | 1182 |
| Technical correction | 2519 |
| 260.110 (a) (5) and (6) removed; eff. 7-5-83 | 24874 |
| 260.111 (a) and (c) amended; (b) revised | 1182 |
| 261 Redesignated from 10 CFR Part 390; authority citation and text nomenclature changes | 1182 |
| Technical correction | 2519 |
| Redesignated as Part 220 | 35642 |
| 262 Redesignated from 10 CFR Part 391; authority citation and text nomenclature changes | 1182 |
| Technical correction | 2519 |
| 262.110 (a) amended | 1182 |
| 263 Redesignated from 10 CFR Part 378 and removed | 1182 |
| Technical correction | 2519 |
| 262 Redesignated as Part 209 | 35642 |
| 265 Heading added | 35642 |
| 266 Heading added | 35642 |
| 267 Heading added | 35642 |
| 268 Heading added | 35642 |
| 270 Responsibility and authority transferred | 8982 |
| Redesignated as 43 CFR Part 3260 | 44786 |
| 270.49 Redesignated as 210.301 | 35641 |
| 270.50 (a) redesignated as 218.300 | 35641 |
| 270.62 Redesignated as 206.300 | 35641 |
| 270.63 Redesignated as 206.301 | 35641 |
| 270.75 Redesignated as 210.300 | 35641 |
| 270.81 Redesignated as 218.301 | 35641 |
| 271 Responsibility and authority transferred | 8982 |
| Redesignated as 43 CFR Part 3280 | 44792 |
| 290 Responsibility and authority transferred | 8982 |
| (Subchapter C) Heading added | 35642 |

## 30 CFR—Continued

48 FR Page

Chapter VI

641 Redesignated as Part 880 and revised....37378
642 Redesignated as Part 881 and revised....37379

## 1984

## 30 CFR

49 FR Page

Chapter II

210 Authority citation....37344
210.10 Amended....37345
210.50—210.53 (Subpart B) Added....37345
212.50—212.52 (Subpart B) Added....37345
212.51 (c) corrected....40576
217.50—217.52 (Subpart B) Added....37345
218.50—218.57 (Subpart B) Added....37346
218.102 (c) and (d) removed; (e) redesignated as (c)....37347
218.103 Added....37347
218.104 Added....37347
218.105 Added....37347
218.150 (d) and (e) removed; (f) redesignated as (d)....37347
218.155 Revised....8605
219.100—219.105 (Subpart C) Added....37347
228 Added....37348
229 Added....37350
229.100—229.111 Undesignated heading added; interim....40026
229.100 Redesignated as 229.101 and (e) removed; interim....40025
Added; interim....40026
229.101 (a) and (b) redesignated as 229.102 (a) and (b); new 229.101 redesignated from 229.100 (a) through (d); interim....40025
229.102 Existing text designated as (c); (a) and (b) redesignated from 229.101 (a) and (b); interim....40025
229.103 Heading revised; interim....40025
229.104 Redesignated as 220.105; interim....40025
Added; interim....40026
229.105 Removed; new 229.105 redesignated from 229.104; interim....40025

## 30 CFR—Continued

49 FR Page

Chapter II—Continued

229.106 Removed; new 229.106 redesignated from 229.120; interim....40025
229.107 Redesignated as 229.127; interim....40025
Added; interim....40026
229.108 Redesignated as 229.110; new 229.108 redesignated from old 229.110; interim....40025
229.110 Redesignated as 229.108; new 229.110 redesignated from old 229.108; interim....40025
229.111 Added; interim....40026
229.120—229.127 Undesignated center heading added; interim....40026
229.120 Redesignated as 229.106; interim....40025
Added; interim....40026
229.121 Added; interim....40026
229.122 Added; interim....40027
229.123 Added; interim....40027
229.124 Added; interim....40027
229.125 Added; interim....40028
229.126 Added; interim....40028
229.127 Redesignated from 229.107; interim....40025
241 Authority citation....37351
241.20 Added....37352
(b) corrected....40576
241.50—241.52 (Subpart B) Added....37352
243.1—243.2 (Subpart A) Added....37353
250 OCS Order No. 1 amended....1897
Interpretation; OCS Order No. 1 extension of effective date and correction....6095
250.2 (e) removed....10670
250.12 (c) through (g) redesignated as (d) through (h); new (c) added; new (d), (e)(2) and (5), (f), (g)(1)(ii) and (iii), and (h) introductory text and (2)(i) amended; interim....17450
(g)(1)(ii) corrected....26225
(g)(1)(ii) corrected....36500
252.2 (e) revised....10670
253 Redesignated from 43 CFR 6224.0-1—6224.5 (Subpart 6224) and removed....46892
256.47 (f) revised....8606

## 30 CFR—Continued

49 FR Page

Chapter II—Continued

(e)(1) revised; (e)(2) redesignated as (e)(3); new (e)(2) added........ 10056

## 1985

## 30 CFR

50 FR Page

Chapter II

229.100—229.111 Undesignated center heading confirmed........ 2663
229.100 Addition confirmed........ 2663
229.101 Redesignation confirmed........ 2663
229.102 Amendments confirmed........ 2663
229.103 Heading revision confirmed........ 2663
229.104 Addition confirmed........ 2663
229.105 Redesignation confirmed........ 2663
229.106 Redesignation confirmed........ 2663
229.107 Addition confirmed........ 2663
229.108 Redesignation confirmed........ 2663
229.110 Redesignation confirmed........ 2663
229.111 Addition confirmed........ 2663
229.120—229.127 Undesignated center heading confirmed........ 2663
229.120 Addition confirmed........ 2663
229.121 Addition confirmed........ 2663
229.122 Addition confirmed........ 2663
229.123 Addition confirmed........ 2663
229.124 Addition confirmed........ 2663
229.125 Addition confirmed........ 2663
229.126 Addition confirmed........ 2663
229.127 Redesignation confirmed........ 2663
250.12 (d)(1) revised........ 49043
250.34-1 (a)(3) redesignated as (a)(3)(i); (a)(3)(ii) added........ 49043
250.34-3 Approval and solicitation........ 12248
250.57 Approval and solicitation........ 12248
256.37 (a) redesignated as (a)(1); (a)(2) added........ 49043
256.47 (e)(2) revised........ 47378
256.58 (g) added........ 47378
256.59 Revised........ 47379
270 Added........ 21048

Chapter IV

401 Added........ 23114

## 1986

(Regulations published from January 1, 1986 through July 1, 1986)

## 30 CFR

51 FR Page

Chapter II

210 Authority citation revised........ 15766
210.10 Table amended........ 15766
210.200—210.203 (Subpart E) Heading revised; sections added........ 15766
210 (Subpart F) Heading removed; new Subpart F redesignated from 210.300—210.301 (Subpart G)........ 15766
210.300—210.301 (Subpart G) Redesignated as Subpart F; new Subpart G heading redesignated from Subpart H heading........ 15766
210 (Subpart H) Heading redesignated as Subpart G heading........ 15766
212 Authority citation revised........ 15766
212.200 (Subpart E) Heading revised........ 15767
212.200 (a) revised; (b)(1) amended........ 15767
212 (Subpart F) Heading removed; new Subpart F heading redesignated from Subpart G heading........ 15767
212 (Subpart G) Heading redesignated as Subpart F heading; new Subpart G heading redesignated from Subpart H heading........ 15767
212 (Subpart H) Heading redesignated as Subpart G heading........ 15767
216 Added........ 8175
218 Authority citation revised... 15767, 19063
218.40 Redesignated from 218.56; (c) amended and (e) redesignated as (d)........ 15767
218.56 Redesignated as 218.40 and (c) amended and (e) redesignated as (d); new 218.56 redesignated from 218.57........ 15767
218.57 Redesignated as 218.56........ 15767
218.154 (a) and (b) revised........ 19063
218.200 (Subpart E) Heading revised........ 15767

## 30 CFR—Continued

51 FR Page

Chapter II—Continued

218 (Subpart F) Heading removed; new Subpart F redesignated from 218.300—218.301 (Subpart G)........ 15767

218.300—218.301 (Subpart G) Redesignated as Subpart F; new Subpart G heading redesignated from Subpart H heading........ 15767

218 (Subpart H) Heading redesignated as Subpart G heading........ 15767

251 Authority citation revised.... 17176

251.13 (b) revised........ 17176

## 30 CFR—Continued

51 FR Page

Chapter II—Continued

252 Authority citation revised.... 17176

252.2 (e) revised........ 10382

252.3 (b)(1) and (e)(1) revised; (b)(2) and (e)(3) removed; (b)(3) and (e)(4) redesignated as (b)(2) and (e)(3)........ 17176

256.22 Revised........ 6107

256.23—256.25 (Subpart D) Heading revised; eff. 7-14-86........ 21345

256.23 (b) revised; eff. 7-14-86.... 21345

256.26 (a) revised; eff. 7-14-86.... 21345

Chapter IV

402 Added; eff. 10-1-86........ 20963